

**2008 Environmental Law Conference  
at Yosemite®**

**Session 18**  
***“Key Developments In California Green  
Energy Policy”***

**Supplemental Materials**



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# THE SOLAR AND CLEAN ENERGY ACT OF 2008

## Good Intentions Gone Astray

October 17, 2008

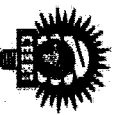
V. JOHN WHITE

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CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES, SACRAMENTO, CALIFORNIA  
"Providing global warming solutions for California and the West"

- The proposed Solar & Clean Energy Act of 2008 does nothing to address the barriers that have been identified by the energy agencies, the renewable industry, conservation groups and others as standing in the way of reaching our renewable energy goals.
- While laudable in its 50 % by 2050 target, initiative does nothing to meaningfully address the majority of these barriers, and in fact creates more loopholes.
- Not only is it doomed to fail to reach its target, but it could impeded renewable energy development in the state.



## 1. The initiative locks in loopholes for compliance and reduces penalties

- The initiative codifies a penalty for noncompliance (1 cent per kWh) that represents an *80 percent reduction* from the penalty authorized by the CPUC (5 cents per kWh).
- While the initiative lifts the current CPUC cap on total penalties, by preserving and expanding loopholes and excuses for non compliance, the initiative all but guarantees that its ambitious targets won't come close to being met.
- The Initiative would also explicitly allow for a signed contract-not the actual construction of a renewable project or delivery of actual electricity from that project- to excuse utilities from compliance.





## What we really need

- Real requirements with real consequences for failure to deliver that will inspire renewable development.
- Compliance with the law must be measured in terms of renewable energy production, not just signed contracts
- An integrated renewables energy plan, phased reduction of fossil fuels, and greenhouse gas reductions.





## 2. Initiative makes unnecessary and harmful changes in CA's siting process for power plants & transmission lines

- For reasons unclear to us, the Act would disrupt the whole system of how renewable programs and siting are administered
1. The initiative imposes a rigid and arbitrary timetable for permitting decisions. Furthermore, it limits all local, regional and state agency to a 100 day period. These timeframes significantly constrain public review and participation, lead to reduced input of sound, scientific information to decision-makers, and are virtually certain to produce poorly designed products, huge controversies, and long delays.
  2. It transfers permitting authority for utility scale wind and pv solar power plants from local governments to the California Energy Commission (CEC), and permitting authority for transmission from the CPUC to the CEC- for no apparent reason, which will add uncertainty and delay to the permitting burden on these





## What we really need

1. Renewable energy development zones and transmission corridors to help streamline the permitting process while minimizing harm to the environment and facilitating public participation.
2. Joint programmatic EIR/EIS for California by the CEC and BLM will formalize the zones and streamline review without blocking public participation and good science. Planning and engaging stakeholders at the "front end" of projects leads to less controversy and delay in implementation of permitting decisions.
3. The ISO's interconnection planning queue procedure must be streamlined, and cooperation between municipal utilities and investor owned enhanced to accelerate renewable development and integration.
  - *The initiative does not address any of these issues and all three of these solutions are already in the process of being addressed through other processes.*



### 3. The initiative arbitrarily limits price paid for renewable energy

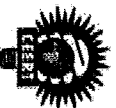
The initiative puts in place arbitrary cost caps on renewable purchases and rate increases, none of which apply to any other source of electricity, such as natural gas.

- The limitation placed on rate increases in the initiative could provide another loophole for non-compliance if the rate increase exceeds this limitation.
- Placing an arbitrary cap on renewables while simultaneously accelerating renewable purchase requirements could hinder achievement of the targets and large scale development of new technology.



## What we really need

- Renewable pricing must support the actual cost of renewable technology development
- Pricing policies that adequately value the different attributes of wind, solar, geothermal, and bio power make more sense than arbitrary cost caps.





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# **Renewable Energy and Climate Change**

**September 30 – October 1, 2008**

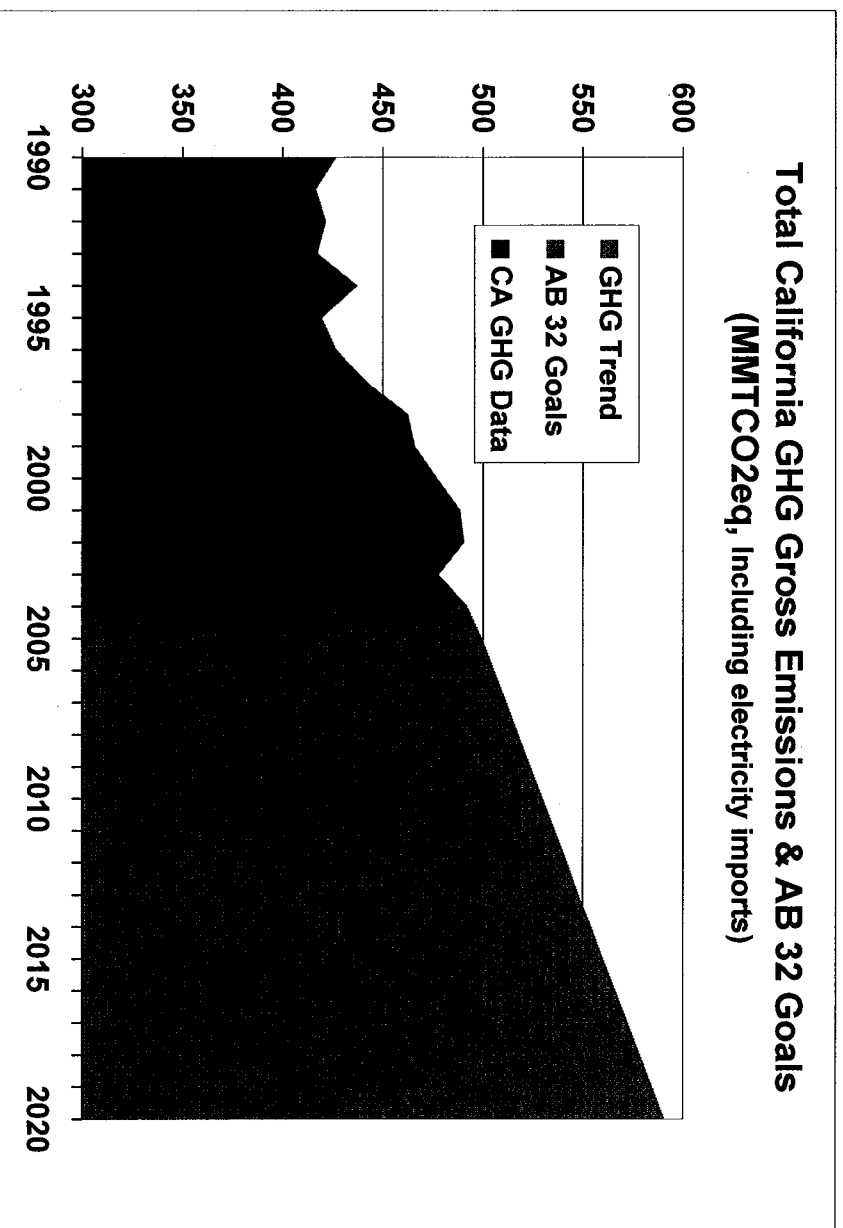
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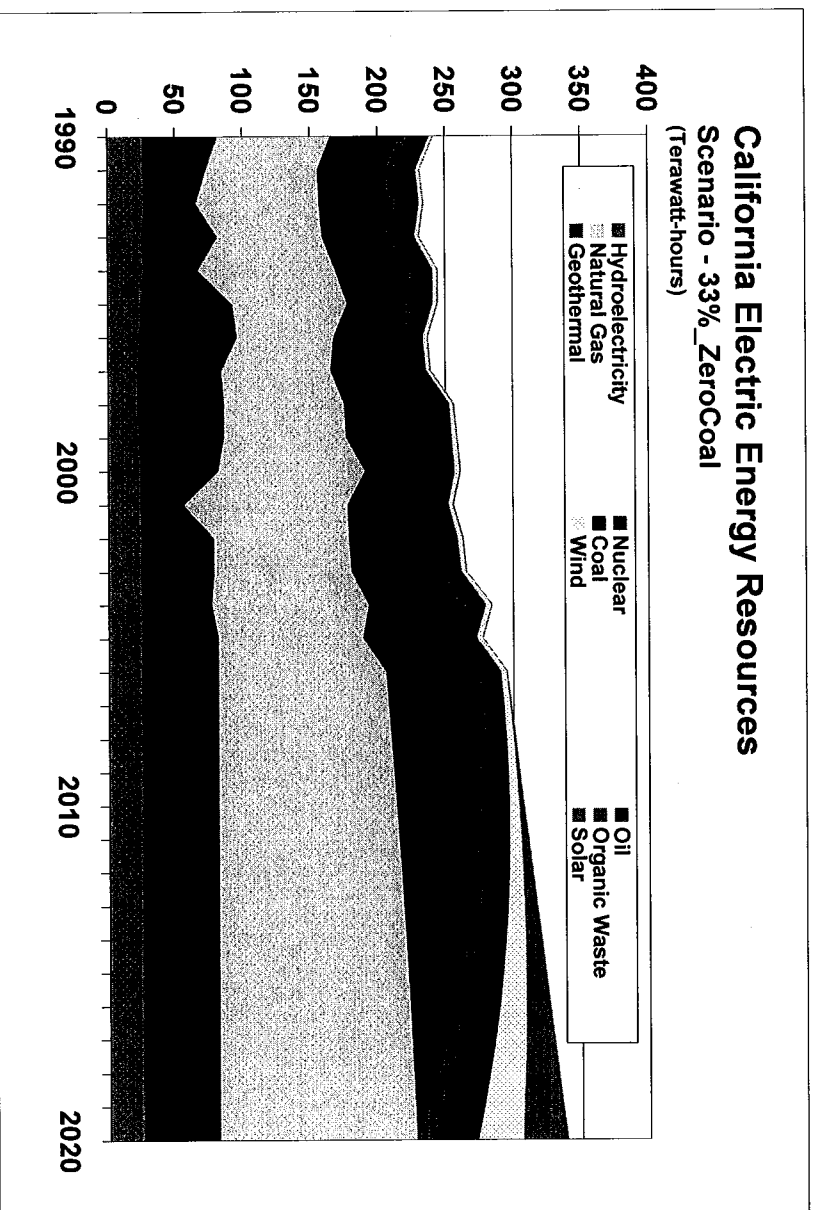
# California emissions of greenhouse gases must decrease to limit global warming.



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California's electricity increasingly will  
come from the sun, wind and the Earth.

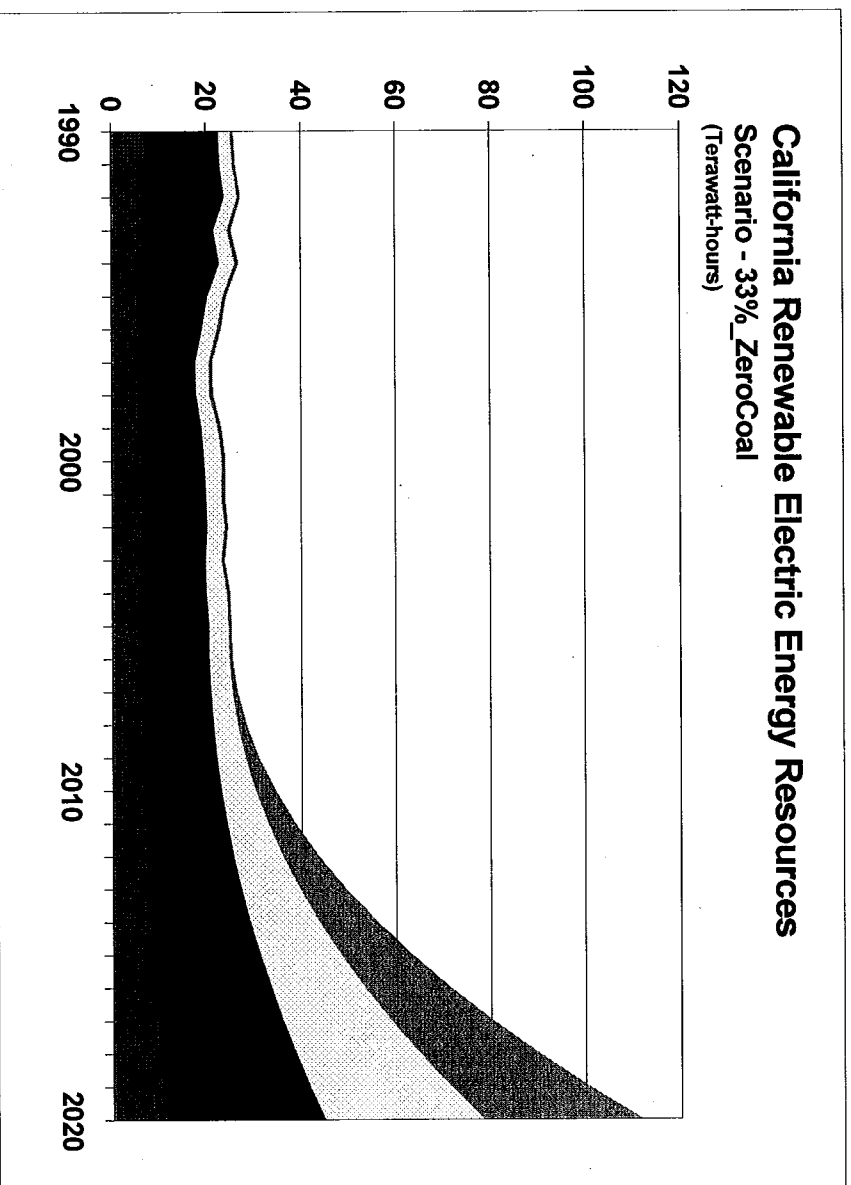


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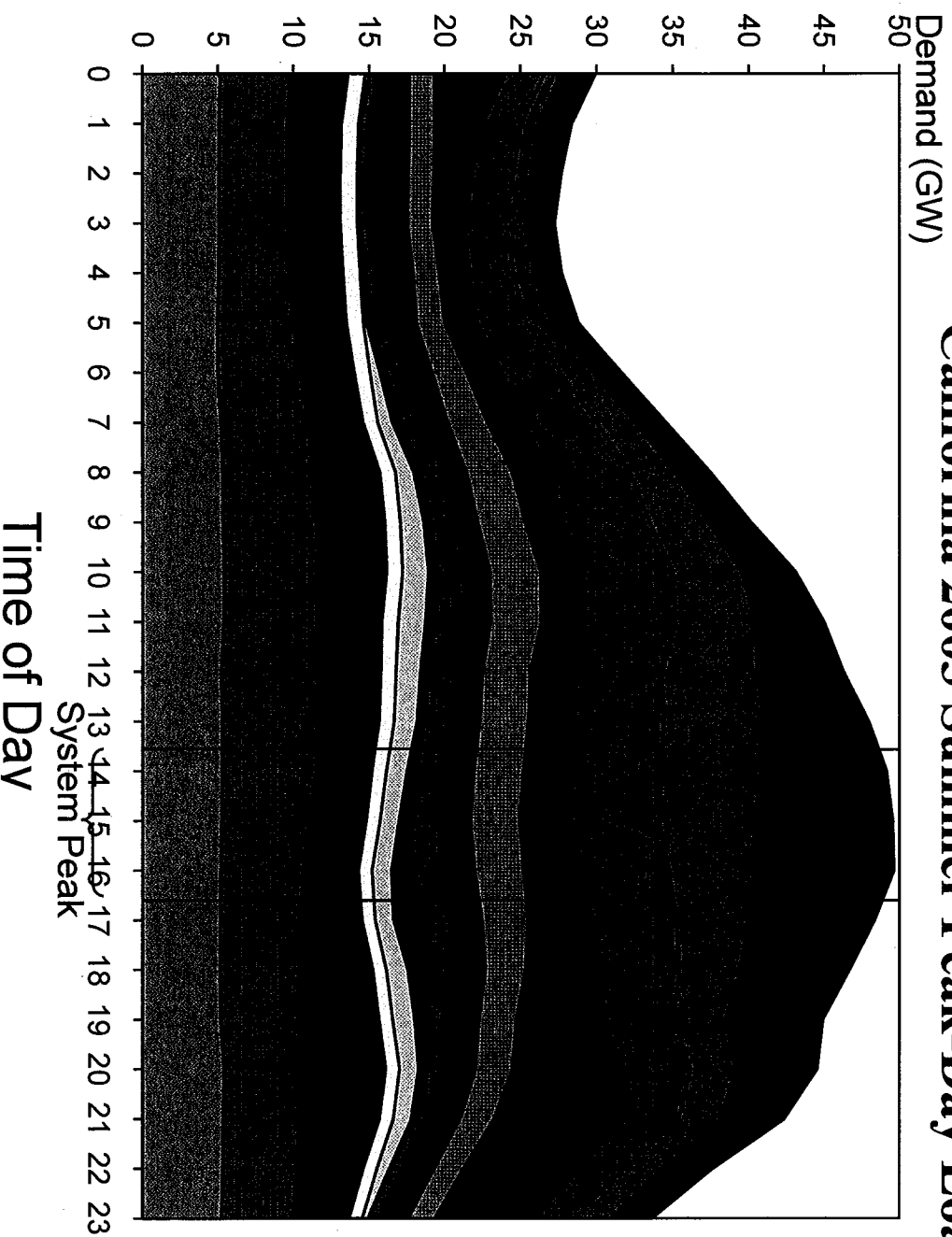




# The challenge facing California is to develop its non-fossil resources quickly enough.



# California 2003 Summer Peak-Day Load



- Residual (Other Area)
- Res. - Air Conditioning
- Com. - Air Conditioning
- Com. - Interior Lighting
- Res. - Miscellaneous
- Com. - Other
- Res. - Refrigerator
- Com. - Ventilation
- Res. - Cooking
- Res. - Clothes Dryer
- Com. - Refrigeration
- Remainder of Com & Res
- Industrial Sector
- TCU, Agr & Other Sectors



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# California's Renewable Challenge

- California has adopted aggressive targets for renewables & climate, but has built a regulatory policy underbrush that has become an obstacle to new investment.
- “Megawords” not the same as megawatts; announcements and contracts are not the same as projects under constructions & renewable energy delivered to the grid.
- Political leaders are finally facing up to the gap between words and actions.
- Preoccupation and enthusiasm for cap & trade system hard to justify when California still doesn't allow the use of unbundled renewable energy credits for RPS compliance.



## California's Renewable Challenge, cont...

- RPS has not resulted in successful Renewable Procurement Strategies.
- Even though RPS doesn't legally apply to CA municipal utilities, munis are investing in renewables, and are often better customers for developers than IOUs.
- Need for renewable transmission is obvious, but lack of transmission is an excuse utilities use for refusal to execute effective renewable procurement.
- Renewable integration costs, especially for wind, are another favorite excuse, with wildly inaccurate assumptions and refusal to agree on action items to enhance wind and solar integration.



## California's Renewable Challenge, cont...

- Transmission and generation planning and siting must be integrated in a single agency, or at least, coordinated inter agency agreements should be adopted.
- Wildlife habitat protection and mitigation planning must occur on a regional scale, and developers should share costs with state and federal agencies
- Reasonableness reviews and technology benchmarks should replace fossil fuel-based market price referents.
- "Least cost/best fit" considerations should be incorporated into long term utility procurement plans, and not done by project.



# California Renewable Reform Action Plan

- Adopt a 33% renewable portfolio standard for 2020 for both investor owned and municipally owned utilities.
- Simplify RPS to eliminate market price referent, least cost/best fit, and transmission as an excuse for failure to comply with RPS goal
- Allow unbundled renewable energy credits for RPS compliance by IOUs, munis, and direct access customers
- Phase in use of renewable energy credits generated from anywhere in the WCEC, as credit tracking by the Western Regional Energy Generations Information System (WREGIS) is demonstrated.



## California Renewable Reform Action Plan, Cont...

- Governor Schwarzenegger to direct Renewable Energy Transmission stakeholders to submit joint recommendations and action plans for renewable energy development zones and transmission corridors by the end of 2008.
- Governor to direct Cal ISO to prepare the grid for achieving of accelerated renewable procurement and integration to accommodate 33% by 2020 requirement.
- Governor to direct Cal ISO to make every effort to encourage and accommodate joint planning and ownership of renewable energy transmission by investor owned and publicly owned utilities, especially in Southern California.



# CalISO Action Plan

(To Support Renewable Energy Implementation)

- ISO shall expedite interconnection reform for renewable transmission upgrades and seek accelerated approval from FERC to eliminate delays in current process for interconnection for renewable projects
- ISO shall help foster and encourage joint ownership and planning for renewable-only transmission projects by IOUs and municipal utilities through flexible and creative agreements.
- ISO shall prepare the California grid for large scale deployment and integration of renewables to meet the 33% by 2020 target in most cost-effective manner (suggestion to use the Energy Commission Intermittency Analysis Project study results as a guide).





## Transmission Planning

- **Renewable Energy Transmission Initiative (RETI)**
  - Proactive multi-agency planning
  - Stakeholder driven process
  - Aims to expand beyond California to neighboring states



# California RETI

## Three phases:

- Identify, rank CREZ that best justify new transmission
- Develop conceptual transmission plans
- Plans of service; CPCN applications

**Consensus plan, broad support for next major projects**



# RETI Structure

## **Coordinating Committee:**

- CPUC, CEC, CAISO, POU

## **Stakeholder Steering Committee**

- TOs, LSEs, generators, agencies, enviros, consumers, counties, military
- Meets monthly; many work groups

## **Plenary Group**

- All interested parties



# **Western Renewable Energy Zone (WREZ) Proposal**

**Proactive generation-transmission development**

**Create regional markets for renewables**

- Larger, more liquid, lower cost than state-by-state markets; coordinated procurement
  - Bring best resources to consumers in every region of WECC
- Governor/Commissioner-led stakeholder process**
- Multi-state cooperation on permitting, cost allocation



# WREZ Initiative

## Phase 1

- Assess resources, costs across region
- Stakeholders design, rank zones justifying tx

## Phase 2

- Conceptual transmission to highest ranking REZ
- WGA Wildlife Corridor, eco-regional design

## Phase 3

- Coordinate procurement to support commercial transmission projects

## Phase 4

- Interstate permitting, cost allocation agreements



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Date: December 14, 2007  
Initiative No. 07-0066  
Amendment No. 1S

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

RENEWABLE ENERGY. STATUTE. Requires all utilities, including government-owned utilities, to generate 20% of their power from renewable energy by 2010, a standard currently applicable only to private electrical corporations. Raises requirement for all utilities to 40% by 2020 and 50% by 2025. Imposes penalties for noncompliance. Fast-tracks approval for new renewable energy plants. Requires utilities to sign longer contracts (20 year minimum) to procure renewable energy. Creates Solar and Clean Energy Transmission Account to purchase property or rights of way for renewable energy. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: State administrative costs of up to \$3.4 million annually for the regulatory activities of the Energy Resources Conservation and Development Commission and the California Public Utilities Commission, paid for by fee revenues. Potential, unknown increased costs and reduced revenues, particularly in the short term, to state and local governments resulting from the measure's potential to increase retail electricity rates, with possible offsetting cost savings and revenue increases, to an unknown degree, over the long term to the extent the measure hastens renewable energy development. (Initiative 07-0066.)

# PROPOSITION 1

This law proposed by Senate Bill 1856 of the 2001–2002 Regular Session (Chapter 697, Statutes of 2002) and amended by Assembly Bill 713 of the 2005–2006 Regular Session (Chapter 44, Statutes of 2006) is submitted to the people in accordance with the provisions of Article XVI of the California Constitution.

This proposed law adds sections to the Streets and Highways Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

## PROPOSED LAW

SEC. 2. Chapter 20 (commencing with Section 2704) is added to Division 3 of the Streets and Highways Code, to read:

### CHAPTER 20. SAFE, RELIABLE HIGH-SPEED PASSENGER TRAIN BOND ACT FOR THE 21ST CENTURY

#### Article 1. General Provisions

2704. This chapter shall be known and may be cited as the *Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century*.

2704.01. As used in this chapter, the following terms have the following meanings:

(a) “Committee” means the *High-Speed Passenger Train Finance Committee* created pursuant to Section 2704.12.

(b) “Authority” means the *High-Speed Rail Authority* created pursuant to Section 185020 of the Public Utilities Code.

(c) “Fund” means the *High-Speed Passenger Train Bond Fund* created pursuant to Section 2704.05.

(d) “High-speed train” means a passenger train capable of sustained revenue operating speeds of at least 200 miles per hour where conditions permit those speeds.

(e) “High-speed train system” means a system with high-speed trains and includes, but is not limited to, the following components: right-of-way, track, power system, rolling stock, stations, and associated facilities.

#### Article 2. High-Speed Passenger Train Financing Program

2704.04. (a) It is the intent of the Legislature by enacting this chapter and of the people of California by approving the bond measure pursuant to this chapter to initiate the construction of a high-speed train network consistent with the authority’s *Final Business Plan of June 2000*.

(b) (1) Nine billion dollars (\$9,000,000,000) of the proceeds of bonds authorized pursuant to this chapter, as well as federal funds and other revenues made available to the authority, to the extent consistent with federal and other fund source conditions, shall be used for planning and eligible capital costs, as defined in subdivision (c), for the segment of the high-speed train system between San Francisco Transbay Terminal and Los Angeles Union Station. Once construction of the San Francisco-Los Angeles segment is fully funded, all remaining funds described in this subdivision shall be used for planning and eligible capital costs, as defined in subdivision (c), for the following additional high-speed train segments without preference to order:

- (A) Oakland-San Jose.
- (B) Sacramento-Merced.
- (C) Los Angeles-Inland Empire.
- (D) Inland Empire-San Diego.
- (E) Los Angeles-Irvine.

(2) Revenues generated by operations above and beyond operating and maintenance costs shall be used to fund construction of the high-speed train system.

(c) Capital costs eligible to be paid from proceeds of bonds authorized for high-speed train purposes pursuant to this chapter include all activities necessary for acquisition of right-of-way, construction of tracks, structures, power systems, and stations, purchase of rolling stock and related equipment, and other related capital facilities and equipment.

(d) Proceeds of bonds authorized pursuant to this chapter shall not be used for any operating or maintenance costs of trains or facilities.

(e) The State Auditor shall perform periodic audits of the authority’s use of proceeds of bonds authorized pursuant to this chapter for consistency with the requirements of this chapter.

2704.05. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the *High-Speed Passenger Train Bond Fund*, which is hereby created.

2704.06. Nine billion dollars (\$9,000,000,000) of the money in the fund, upon appropriation by the Legislature, shall be available, without regard to

fiscal years, for planning and construction of a high-speed train system in this state, consistent with the authority’s *Final Business Plan of June 2000*, as subsequently modified pursuant to environmental studies conducted by the authority.

2704.07. The authority shall pursue and obtain other private and public funds, including, but not limited to, federal funds, funds from revenue bonds, and local funds, to augment the proceeds of this chapter.

2704.08. Proceeds of bonds authorized for high-speed train purposes pursuant to this chapter shall not be used for more than one-half of the total cost of construction of track and station costs of each segment of the high-speed train system.

2704.09. The high-speed train system to be constructed pursuant to this chapter shall have the following characteristics:

(a) Electric trains that are capable of sustained maximum revenue operating speeds of no less than 200 miles per hour.

(b) Maximum express service travel times for each corridor that shall not exceed the following:

- (1) San Francisco-Los Angeles Union Station: two hours, 42 minutes.
- (2) Oakland-Los Angeles Union Station: two hours, 42 minutes.
- (3) San Francisco-San Jose: 31 minutes.
- (4) San Jose-Los Angeles: two hours, 14 minutes.
- (5) San Diego-Los Angeles: one hour.
- (6) Inland Empire-Los Angeles: 29 minutes.
- (7) Sacramento-Los Angeles: two hours, 22 minutes.
- (8) Sacramento-San Jose: one hour, 12 minutes.

(c) Achievable operating headway (time between successive trains) shall be five minutes or less.

(d) The total number of stations to be served by high-speed trains for all of the segments described in subdivision (b) of Section 2704.04 shall not exceed 24.

(e) Trains shall have the capability to transition intermediate stations, or to bypass those stations, at mainline operating speed.

(f) For each corridor described in subdivision (b), passengers shall have the capability of traveling from any station on that corridor to any other station on that corridor without being required to change trains.

(g) In order to reduce impacts on communities and the environment, the alignment for the high-speed train system shall follow existing transportation or utility corridors to the extent possible.

(h) Stations shall be located in areas with good access to local mass transit or other modes of transportation.

(i) The high-speed train system shall be planned and constructed in a manner that minimizes urban sprawl and impacts on the natural environment.

(j) Preserving wildlife corridors and mitigating impacts to wildlife movement where feasible in order to limit the extent to which the system may present an additional barrier to wildlife’s natural movement.

2704.095. (a) (1) Of the proceeds of bonds authorized pursuant to this chapter, nine hundred fifty million dollars (\$950,000,000) shall be allocated to eligible recipients for capital improvements to intercity and commuter rail lines and urban rail systems to provide connectivity to the high-speed train system as that system is described in subdivision (b) of Section 2704.04 and to provide capacity enhancements and safety improvements. Funds under this section shall be available upon appropriation by the Legislature in the Annual Budget act for the eligible purposes described in subdivision (d).

(2) Twenty percent (one hundred ninety million dollars (\$190,000,000)) of the amount authorized by this section shall be allocated for intercity rail to the Department of Transportation, for state-supported intercity rail lines that provide regularly scheduled service and use public funds to operate and maintain rail facilities, rights-of-way, and equipment. A minimum of 25 percent of the amount available under this paragraph (forty-seven million five hundred thousand dollars (\$47,500,000)) shall be allocated to each of the state’s three intercity rail corridors.

The California Transportation Commission shall allocate the available funds to eligible recipients consistent with this section and shall develop guidelines to implement the requirements of this section. The guidelines shall include provisions for the administration of funds, including, but not limited to, the authority of the intercity corridor operators to loan these funds by mutual agreement between intercity rail corridors.

(3) Eighty percent (seven hundred sixty million dollars (\$760,000,000)) of the amount authorized by this section shall be allocated to eligible recipients, except intercity rail, as described in subdivision (c) based upon a percentage amount calculated to incorporate all of the following:



(A) One-third of the eligible recipient's percentage share of statewide track miles.

(B) One-third of the eligible recipient's percentage share of statewide annual vehicle miles.

(C) One-third of the eligible recipient's percentage share of statewide annual passenger trips.

The California Transportation Commission shall allocate the available funds to eligible recipients consistent with this section and shall develop guidelines to implement the requirements of this section.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Track miles" means the miles of track used by a public agency or joint powers authority for regular passenger rail service.

(2) "Vehicle miles" means the total miles traveled, commencing with pullout from the maintenance depot, by all locomotives and cars operated in a train consist for passenger rail service by a public agency or joint powers authority.

(3) "Passenger trips" means the annual unlinked passenger boardings reported by a public agency or joint powers authority for regular passenger rail service.

(4) "Statewide" when used to modify the terms in paragraphs (A), (B), and (C) of paragraph (3) of subdivision (a) means the combined total of those amounts for all eligible recipients.

(c) Eligible recipients for funding under paragraph (3) of subdivision (a) shall be public agencies and joint powers authorities that operate regularly scheduled passenger rail service in the following categories:

(1) Commuter rail.

(2) Light rail.

(3) Heavy rail.

(4) Cable car.

(d) Funds allocated pursuant to this section shall be used for connectivity with the high-speed train system or for the rehabilitation or modernization of, or safety improvements to, tracks utilized for public passenger rail service, signals, structures, facilities, and rolling stock.

(e) Eligible recipients may use the funds for any eligible rail element set forth in subdivision (d).

(f) In order to be eligible for funding under this section, an eligible recipient under paragraph (3) of subdivision (a) shall provide matching funds in an amount not less than the total amount allocated to the recipient under this section.

(g) An eligible recipient of funding under paragraph (3) of subdivision (a) shall certify that it has met its matching funds requirement, and all other requirements of this section, by resolution of its governing board, subject to verification by the California Transportation Commission.

(h) Funds made available to an eligible recipient under paragraph (3) of subdivision (a) shall supplement existing local, state, or federal revenues being used for maintenance or rehabilitation of the passenger rail system. Eligible recipients of funding under paragraph (3) of subdivision (a) shall maintain their existing commitment of local, state, or federal funds for these purposes in order to remain eligible for allocation and expenditure of the additional funding made available by this section.

(i) In order to receive any allocation under this section, an eligible recipient under paragraph (3) of subdivision (a) shall annually expend from existing local, state, or federal revenues being used for the maintenance or rehabilitation of the passenger rail system in an amount not less than the annual average of its expenditures from local revenues for those purposes during the 1998–99, 1999–2000, and 2000–01 fiscal years.

(j) Funds allocated pursuant to this section to the Southern California Regional Rail Authority for eligible projects within its service area shall be apportioned each fiscal year in accordance with memorandums of understanding to be executed between the Southern California Regional Rail Authority and its member agencies. The memorandum or memorandums of understanding shall take into account the passenger service needs of the Southern California Regional Rail Authority and of the member agencies, revenue attributable to member agencies, and separate contributions to the Southern California Regional Rail Authority from the member agencies.

#### Article 3. Fiscal Provisions

2704.10. Bonds in the total amount of nine billion nine hundred fifty million dollars (\$9,950,000,000), exclusive of refunding bonds, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section

16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

2704.11. (a) Except as provided in subdivision (b), the bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law, Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

(b) Notwithstanding any provision of the State General Obligation Bond Law, each issue of bonds authorized by the committee shall have a final maturity of not more than 30 years.

2704.12. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this chapter, the High-Speed Passenger Train Finance Committee is hereby created. For purposes of this chapter, the High-Speed Passenger Train Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Treasurer, the Director of Finance, the Controller, the Secretary of the Business, Transportation and Housing Agency, and the chairperson of the authority, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the authority is designated the "board."

2704.13. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Sections 2704.06 and 2704.095 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be issued and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized be issued and sold at any one time. The committee shall consider program funding needs, revenue projections, financial market conditions, and other necessary factors in determining the shortest feasible term for the bonds to be issued.

2704.14. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

2704.15. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount equal to that sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

2704.16. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for purposes of this chapter. The amount of the request shall not exceed the amount of the unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of this chapter, less any amount borrowed pursuant to Section 2701.17. The board shall execute such documents as required by the Pooled Money Investment Board to obtain and repay the loan. Any amount loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

2704.17. For the purpose of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of unsold bonds which have been authorized by the committee to be sold for the purpose of carrying out this chapter, less any amount borrowed pursuant to Section 2704.16. Any amount withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, plus the interest that the amounts would have earned in the Pooled Money Investment Account, from the sale of bonds for the purpose of carrying out this chapter.

2704.18. All money deposited in the fund which is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

2704.19. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of the State General Obligation Bond Law. Approval by the electors of the state for the issuance of bonds shall include

Removed from ballot  
approval of the issuance of any bonds issued to refund any bonds originally issued or any previously issued refunding bonds.

2704.20. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

2704.21. Notwithstanding any provision of the State General Obligation Bond Law with regard to the proceeds from the sale of bonds authorized by this chapter that are subject to investment under Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, the Treasurer may maintain a separate account for investment earnings, order the payment of those earnings to comply with any rebate requirement applicable under federal law, and may otherwise direct the use and investment of those proceeds so as to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

## PROPOSITION 2

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

#### SECTION 1. SHORT TITLE

This act shall be known and may be cited as the Prevention of Farm Animal Cruelty Act.

#### SECTION 2. PURPOSE

The purpose of this act is to prohibit the cruel confinement of farm animals in a manner that does not allow them to turn around freely, lie down, stand up, and fully extend their limbs.

#### SECTION 3. FARM ANIMAL CRUELTY PROVISIONS

Chapter 13.8 (commencing with Section 25990) is added to Division 20 of the Health and Safety Code, to read:

##### CHAPTER 13.8. FARM ANIMAL CRUELTY

25990. PROHIBITIONS. In addition to other applicable provisions of law, a person shall not tether or confine any covered animal, on a farm, for all or the majority of any day, in a manner that prevents such animal from:

- (a) Lying down, standing up, and fully extending his or her limbs; and
- (b) Turning around freely.

25991. DEFINITIONS. For the purposes of this chapter, the following terms have the following meanings:

(a) "Calf raised for veal" means any calf of the bovine species kept for the purpose of producing the food product described as veal.

(b) "Covered animal" means any pig during pregnancy, calf raised for veal, or egg-laying hen who is kept on a farm.

(c) "Egg-laying hen" means any female domesticated chicken, turkey, duck, goose, or guinea fowl kept for the purpose of egg production.

(d) "Enclosure" means any cage, crate, or other structure (including what is commonly described as a "gestation crate" for pigs; a "veal crate" for calves; or a "battery cage" for egg-laying hens) used to confine a covered animal.

(e) "Farm" means the land, building, support facilities, and other equipment that are wholly or partially used for the commercial production of animals or animal products used for food or fiber; and does not include live animal markets.

(f) "Fully extending his or her limbs" means fully extending all limbs without touching the side of an enclosure, including, in the case of egg-laying hens, fully spreading both wings without touching the side of an enclosure or other egg-laying hens.

(g) "Person" means any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate.

(h) "Pig during pregnancy" means any pregnant pig of the porcine species kept for the primary purpose of breeding.

(i) "Turning around freely" means turning in a complete circle without any impediment, including a tether, and without touching the side of an enclosure.

25992. EXCEPTIONS. This chapter shall not apply:

- (a) During scientific or agricultural research.
- (b) During examination, testing, individual treatment or operation for veterinary purposes.
- (c) During transportation.
- (d) During rodeo exhibitions, state or county fair exhibitions, 4-H programs, and similar exhibitions.

(e) During the slaughter of a covered animal in accordance with the provisions of Chapter 6 (commencing with Section 19501) of Part 3 of Division 9 of the Food and Agricultural Code, relating to humane methods of slaughter, and other applicable law and regulations.

(f) To a pig during the seven-day period prior to the pig's expected date of giving birth.

25993. ENFORCEMENT. Any person who violates any of the provisions of this chapter is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed 180 days or by both such fine and imprisonment.

#### 25994. CONSTRUCTION OF CHAPTER.

The provisions of this chapter are in addition to, and not in lieu of, any other laws protecting animal welfare, including the California Penal Code. This chapter shall not be construed to limit any state law or regulations protecting the welfare of animals, nor shall anything in this chapter prevent a local governing body from adopting and enforcing its own animal welfare laws and regulations.

#### SECTION 4. SEVERABILITY

If any provision of this act, or the application thereof to any person or circumstances, is held invalid or unconstitutional, that invalidity or unconstitutionality shall not affect other provisions or applications of this act that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are severable.

#### SECTION 5. EFFECTIVE DATES

The provisions of Sections 25990, 25991, 25992, 25993, and 25994 shall become operative on January 1, 2015.

## PROPOSITION 3

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

SECTION 1. Part 6.1 (commencing with Section 1179.50) is added to Division 1 of the Health and Safety Code, to read:

#### PART 6.1. CHILDREN'S HOSPITAL BOND ACT OF 2008

##### CHAPTER 1. GENERAL PROVISIONS

1179.50. (a) This part shall be known and may be cited as the Children's Hospital Bond Act of 2008.

(b) California's network of regional children's hospitals provide vital health care services to children facing life-threatening illness or injury. Over one million times each year, children are cared for at these hospitals without regard to their family's ability to pay.

(c) Children's hospitals also provide specialized treatment and care that has increased the survival of children suffering from serious diseases and illnesses such as childhood leukemia, cancer, heart defects, diabetes, sickle cell anemia, and cystic fibrosis.

(d) Children's hospitals also provide essential training for pediatricians, pediatric specialists and others who treat children, and they conduct critically important medical research that benefits all of California's children.

(e) However, the burden of providing uncompensated care and the increasing costs of health care seriously impair our children's hospitals' ability to modernize and expand their facilities and to purchase the latest medical technologies and special medical equipment necessary to take care of sick children.

(f) Therefore, the people desire to provide a steady and ready source of funds for capital improvement programs for children's hospitals to improve the health, welfare, and safety of California's children.

1179.51. As used in this part, the following terms have the following meanings:

(a) "Authority" means the California Health Facilities Financing Authority established pursuant to Section 15431 of the Government Code.

(b) "Children's hospital" means either of the following:

(1) A University of California general acute care hospital described below:

(A) University of California, Davis Children's Hospital.

(B) Mattel Children's Hospital at University of California, Los Angeles.

(C) University Children's Hospital at University of California, Irvine.

(D) University of California, San Francisco Children's Hospital.

(E) University of California, San Diego Children's Hospital.

(2) A general acute care hospital that is, or is an operating entity of, a California nonprofit corporation incorporated prior to January 1, 2003, whose mission of clinical care, teaching, research, and advocacy focuses on children, and that provides comprehensive pediatric services to a high volume of children eligible for governmental programs and to children with special health care needs eligible for the California Children's Services program and that meets all of the following:

(A) The hospital had at least 160 licensed beds in the categories of pediatric acute, pediatric intensive care and neonatal intensive care in the fiscal year ending between June 30, 2001, and June 29, 2002, as reported to the Office of Statewide Health Planning and Development on or before July 1, 2003.

(B) The hospital provided over 30,000 total pediatric patient (census) days, excluding nursery acute days, in the fiscal year ending between June 30, 2001, and June 29, 2002, as reported to the Office of Statewide Health Planning and Development on or before July 1, 2003.

(C) The hospital provided medical education to at least eight, rounded to the nearest whole integer, full-time equivalent pediatric or pediatric subspecialty residents in the fiscal year ending between June 30, 2001, and June 29, 2002, as reported to the Office of Statewide Health Planning and Development on or before July 1, 2003.

(c) "Committee" means the Children's Hospital Bond Act Finance Committee created pursuant to Section 1179.61.

(d) "Fund" means the Children's Hospital Bond Act Fund created pursuant to Section 1179.53.

(e) "Grant" means the distribution of money in the fund by the authority to children's hospitals for projects pursuant to this part.

(f) "Program" means the Children's Hospital Program established pursuant to this part.

(g) "Project" means constructing, expanding, remodeling, renovating, furnishing, equipping, financing, or refinancing of a children's hospital to be financed or refinanced with funds provided in whole or in part pursuant to this part. "Project" may include reimbursement for the costs of constructing, expanding, remodeling, renovating, furnishing, equipping, financing, or refinancing of a children's hospital where these costs are incurred after January 31, 2008. "Project" may include any combination of one or more of the foregoing undertaken jointly by any participating children's hospital that qualifies under this part.

#### CHAPTER 2. THE CHILDREN'S HOSPITAL PROGRAM

1179.53. The proceeds of bonds issued and sold pursuant to this part shall be deposited in the Children's Hospital Bond Act Fund, which is hereby created.

1179.54. The purpose of the Children's Hospital Program is to improve the health and welfare of California's critically ill children, by providing a stable and ready source of funds for capital improvement projects for children's hospitals. The program provided for in this part is in the public interest, serves a public purpose, and will promote the health, welfare, and safety of the citizens of the state.

1179.55. The authority is authorized to award grants to any children's hospital for purposes of funding projects, as defined in subdivision (g) of Section 1179.51.

1179.56. (a) Twenty percent of the total funds available for grants pursuant to this part shall be awarded to children's hospitals as defined in paragraph (1) of subdivision (b) of Section 1179.51.

(b) Eighty percent of the total funds available for grants pursuant to this part shall be awarded to children's hospitals as defined in paragraph (2) of subdivision (b) of Section 1179.51.

1179.57. (a) The authority shall develop a written application for the awarding of grants under this part within 90 days of the adoption of this act. The authority shall award grants to eligible children's hospitals, subject to the limitations of this part and to further the purposes of this part based on the following factors:

(1) The grant will contribute toward expansion or improvement of health

care access by children eligible for governmental health insurance programs and indigent, underserved, and uninsured children.

(2) The grant will contribute toward the improvement of child health care or pediatric patient outcomes.

(3) The children's hospital provides uncompensated or undercompensated care to indigent or public pediatric patients.

(4) The children's hospital provides services to vulnerable pediatric populations.

(5) The children's hospital promotes pediatric teaching or research programs.

(6) Demonstration of project readiness and project feasibility.

(b) (1) An application for funds shall be submitted to the authority for approval as to its conformity with the requirements of this part.

(2) The authority shall process and award grants in a timely manner, not to exceed 60 days.

(c) A children's hospital identified in paragraph (1) of subdivision (b) of Section 1179.51 shall not apply for, and the authority shall not award to that children's hospital, a grant that would cause the total amount of grants awarded to that children's hospital to exceed one-fifth of the total funds available for grants to all children's hospitals pursuant to subdivision (a) of Section 1179.56. Notwithstanding this grant limitation, any funds available under subdivision (a) of Section 1179.56 that have not been exhausted by June 30, 2018, shall become available for an application from any children's hospital identified in paragraph (1) of subdivision (b) of Section 1179.51.

(d) A children's hospital identified in paragraph (2) of subdivision (b) of Section 1179.51 shall not apply for, and the authority shall not award to that children's hospital, a grant that would cause the total amount of grants awarded to that children's hospital to exceed ninety-eight million dollars (\$98,000,000) from funds available for grants to all children's hospitals pursuant to subdivision (b) of Section 1179.56. Notwithstanding this grant limitation, any funds available under subdivision (b) of Section 1179.56 that have not been exhausted by June 30, 2018, shall become available for an application from any children's hospital defined in paragraph (2) of subdivision (b) of Section 1179.51.

(e) In no event shall a grant to finance a project exceed the total cost of the project, as determined by the children's hospital and approved by the authority.

(f) All projects that are awarded grants shall be completed within a reasonable period of time. If the authority determines that the children's hospital has failed to complete the project under the terms specified in awarding the grant, the authority may require remedies, including the return of all or a portion of the grant. A children's hospital receiving a grant under this part shall submit certification of project completion to the authority.

(g) Grants shall only be available pursuant to this section if the authority determines that it has sufficient money available in the fund. Nothing in this section shall require the authority to award grants if the authority determines that it has insufficient moneys available in the fund to do so.

(h) The authority may annually determine the amount available for purposes of this part. Administrative costs for this program shall not exceed the actual costs or 1 percent, whichever is less.

1179.58. The Bureau of State Audits may conduct periodic audits to ensure that bond proceeds are awarded in a timely fashion and in a manner consistent with the requirements of this part, and that awardees of bond proceeds are using funds in compliance with applicable provisions of this part.

#### CHAPTER 3. FISCAL PROVISIONS

1179.59. Bonds in the total amount of nine hundred eighty million dollars (\$980,000,000), not including the amount of any refunding bonds, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

1179.60. The bonds authorized by this part shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this part and are hereby incorporated in this part as though set forth in full in this part.

1179.61. (a) Solely for the purpose of authorizing the issuance and sale

pursuant to the State General Obligation Bond Law of the bonds authorized by this part, the Children's Hospital Bond Act Finance Committee is hereby created. For purposes of this part, the Children's Hospital Bond Act Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Controller, Director of Finance, and the Treasurer, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) The authority is designated the "board" for purposes of the State General Obligation Bond Law, and shall administer the program pursuant to this part.

1179.62. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this part in order to carry out the actions specified in Section 1179.54 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds be issued or sold at any one time.

1179.63. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

1179.64. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated continuously from the General Fund in the State Treasury, for the purposes of this part, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this part, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 1179.65, appropriated without regard to fiscal years.

1179.65. For the purposes of carrying out this part, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this part. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund from proceeds received from the sale of bonds for the purpose of carrying out this part.

1179.66. All money deposited in the fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

1179.67. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, the cost of bond issuance shall be paid out of the bond proceeds. These costs shall be shared proportionally by each children's hospital funded through this bond act.

1179.68. The authority may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, including other authorized forms of interim financing that include, but are not limited to, commercial paper, in accordance with Section 16312 of the Government Code, for purposes of carrying out this part. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this part. The authority shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this part.

1179.69. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this part includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this part or any previously issued refunding bonds.

1179.70. Notwithstanding any other provision of this part, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this part that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment of earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or

earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

1179.71. The people hereby find and declare that, inasmuch as the proceeds from the sale of bonds authorized by this part are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that part.

1179.72. Notwithstanding any other provision of this part, the provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

## PROPOSITION 4

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the California Constitution.

This initiative measure expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

#### SECTION 1. Title

This measure shall be known and may be cited as the Child and Teen Safety and Stop Predators Act: Sarah's Law.

#### SEC. 2. Declaration of Findings and Purposes

The people of California have a compelling interest in protecting minors from the known risks of secret abortions, including the danger of not obtaining prompt care for health- and life-threatening complications when a minor's parent or responsible family member is unaware that she has undergone a secret abortion. The people also have a compelling interest in preventing sexual predators from using secret abortions to conceal sexual exploitation of minors.

#### SEC. 3. Parental Notification

Section 32 is added to Article I of the California Constitution, to read:

SEC. 32. (a) For purposes of this section, the following terms shall be defined to mean:

(1) "Abortion" means the use of any means to terminate the pregnancy of an unemancipated minor known to be pregnant except for the purpose of producing a live birth. "Abortion" shall not include the use of any contraceptive drug or device.

(2) "Medical emergency" means a condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant unemancipated minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(3) "Parent" means a person who, at the time notice or waiver is required under this section, is either a parent if both parents have legal custody, or the parent or person having legal custody, or the legal guardian of an unemancipated minor.

(4) "Adult family member" means a person at least 21 years of age who is the grandparent, stepparent, foster parent, aunt, uncle, sibling, half-sibling, or first cousin of an unemancipated minor.

(5) "Notice" means a written notification, signed and dated by a physician or his or her agent, informing the parent or adult family member of an unemancipated minor that she is pregnant and has requested an abortion.

(6) "Unemancipated minor" means a female under the age of 18 years who has not entered into a valid marriage and is not on active duty with the armed services of the United States and has not received a declaration of emancipation under state law. For the purposes of this section, pregnancy does not emancipate a female under the age of 18 years.

(7) "Physician" means any person authorized under the statutes and regulations of the State of California to perform an abortion upon an unemancipated minor.

(b) Notwithstanding Section 1 of Article I, or any other provision of this Constitution or law to the contrary and except in a medical emergency as provided for in subdivision (f), a physician shall not perform an abortion upon a pregnant unemancipated minor until at least 48 hours has elapsed after the physician or the physician's agent has delivered written notice to her parent

personally or by mail as provided in subdivision (c); or until the physician or the physician's agent has received a valid written waiver of notice as provided in subdivision (d); or until 48 hours after the physician has delivered written notice to an adult family member and has made a report of known or suspected child abuse, as provided in subdivision (e); or until the physician has received a copy of a waiver of notification from the court as provided in subdivision (h), (i), or (j). A copy of any notice or waiver shall be retained with the unemancipated minor's medical records. The physician or the physician's agent shall inform the unemancipated minor that her parent may receive notice as provided for in this section.

(c) The written notice shall be delivered by the physician or the physician's agent to the parent, either personally or by certified mail addressed to the parent at the parent's last known address with return receipt requested and restricted delivery to the addressee. If notice is provided by certified mail, a copy of the written notice shall also be sent at the same time by first class mail to the parent. Notice by mail may be presumed to have been delivered under the provisions of this subdivision at noon of the second day after the written notice sent by certified mail was postmarked, not counting any days on which regular mail delivery does not take place. A form for the notice shall be prescribed by the State Department of Health Services. The notice form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published.

(d) Notice of an unemancipated minor's intent to obtain an abortion may be waived by her parent. The waiver must be in writing, on a form prescribed by the State Department of Health Services, signed by a parent, dated, and notarized. The parent shall specify on the form that the waiver is valid for 30 days, or until a specified date, or until the minor's eighteenth birthday. The written waiver need not be notarized if the parent personally delivers it to the physician or the physician's agent. The form shall include the following statement: **"WARNING. It is a crime to knowingly provide false information to a physician or a physician's agent for the purpose of inducing a physician or a physician's agent to believe that a waiver of notice has been provided by a parent or guardian."** The waiver form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published. For each abortion performed on an unemancipated minor pursuant to this subdivision, the physician or the physician's agent must receive a separate original written waiver that shall be retained with the unemancipated minor's medical records.

(e) Notice to a parent shall not be required under this section if, at least 48 hours prior to performing the abortion, the attending physician has delivered notice in the manner prescribed and on the form prescribed in subdivision (c) to an adult family member designated by the unemancipated minor and has made a written report of known or suspected child abuse concerning the unemancipated minor to the appropriate law enforcement or public child protective agency. Such report shall be based on a minor's written statement that she fears physical, sexual, or severe emotional abuse from a parent who would otherwise be notified and that her fear is based on a pattern of physical, sexual, or severe emotional abuse of her exhibited by a parent. The physician shall include the minor's statement with his or her report and shall also retain a copy of the statement and the report in the minor's medical records. The physician shall also include with the notice a letter informing the adult family member that a report of known or suspected child abuse has been made concerning the minor and identifying the agency to which the report was made. The minor shall be informed that the notice and the letter will be delivered to the adult family member she has designated.

(f) Notice shall not be required under this section if the attending physician certifies in the unemancipated minor's medical records the medical indications supporting the physician's good-faith clinical judgment that the abortion is necessary due to a medical emergency.

(g) Notice shall not be required under this section if waived pursuant to this subdivision and subdivision (h), (i), or (j). If the pregnant unemancipated minor elects not to permit notice to be given to a parent, she may file a petition with the juvenile court. No filing fee shall be required for filing a petition. If, pursuant to this subdivision, an unemancipated minor seeks to file a petition, the court shall assist the minor or person designated by the minor in preparing the documents required pursuant to this section. The petition shall set forth with specificity the minor's reasons for the request. The unemancipated minor shall appear personally in the proceedings in juvenile court and may appear on her own behalf or with counsel of her own choosing. The court shall, however, advise her that she has a right to court-appointed counsel upon

request. The hearing shall be held by 5 p.m. on the second court day after filing the petition unless extended at the written request of the unemancipated minor or her counsel. The unemancipated minor shall be notified of the date, time, and place of the hearing on the petition. Judgment shall be entered within one court day of submission of the matter. The judge shall order a record of the evidence to be maintained, including the judge's written factual findings and legal conclusions supporting the decision. The court shall ensure that the minor's identity be kept confidential and that all court proceedings be sealed.

(h) (1) If the judge finds, by clear and convincing evidence, that the unemancipated minor is both sufficiently mature and well-informed to decide whether to have an abortion, the judge shall authorize a waiver of notice of a parent.

(2) If the judge finds, by clear and convincing evidence, that notice to a parent is not in the best interests of the unemancipated minor, the judge shall authorize a waiver of notice. If the finding that notice to a parent is not in the best interests of the minor is based on evidence of physical, sexual, or emotional abuse, the court shall ensure that such evidence is brought to the attention of the appropriate law enforcement or public child protective agency.

(3) If the judge does not make a finding specified in paragraph (1) or (2), the judge shall deny the petition.

(i) If the judge fails to rule within the time period specified in subdivision (g) and no extension was requested and granted, the petition shall be deemed granted and the notice requirement shall be waived.

(j) The unemancipated minor may appeal the judgment of the juvenile court at any time after the entry of judgment. The Judicial Council shall prescribe, by rule, the practice and procedure on appeal and the time and manner in which any record on appeal shall be prepared and filed and may prescribe forms for such proceedings. These procedures shall require that the hearing shall be held within three court days of filing the notice of appeal. The unemancipated minor shall be notified of the date, time, and place of the hearing. The appellate court shall ensure that the unemancipated minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing an appeal. Judgment on appeal shall be entered within one court day of submission of the matter.

(k) The Judicial Council shall prescribe, by rule, the practice and procedure for petitions for waiver of parental notification, hearings, and entry of judgment as it deems necessary and may prescribe forms for such proceedings. Each court shall provide annually to the Judicial Council, in a manner to be prescribed by the Judicial Council to ensure confidentiality of the unemancipated minors filing petitions, a report of the number of petitions filed, the number of petitions granted under paragraph (1) or (2) of subdivision (h), deemed granted under subdivision (i), denied under paragraph (3) of subdivision (h), and granted or denied under subdivision (j), said reports to be publicly available unless the Judicial Council determines that the data contained in individual reports should be aggregated by county before being made available to the public in order to preserve the confidentiality of the unemancipated minors filing petitions.

(l) The State Department of Health Services shall prescribe forms for the reporting of abortions performed on unemancipated minors by physicians. The report forms shall not identify the unemancipated minor or her parent(s) by name or request other information by which the unemancipated minor or her parent(s) might be identified. The forms shall include the date of the procedure and the unemancipated minor's month and year of birth, the duration of the pregnancy, the type of abortion procedure, the numbers of the unemancipated minor's previous abortions and deliveries if known, and the facility where the abortion was performed. The forms shall also indicate whether the abortion was performed pursuant to subdivision (c), (d), (e), (f), (h), (i), or (j).

(m) The physician who performs an abortion on an unemancipated minor shall within one month file a dated and signed report concerning that abortion with the State Department of Health Services on forms prescribed pursuant to subdivision (l). The identity of the physician shall be kept confidential and shall not be subject to disclosure under the California Public Records Act.

(n) The State Department of Health Services shall compile an annual statistical report from the information specified in subdivision (l). The annual report shall not include the identity of any physician who filed a report as required by subdivision (m). The compilation shall include statistical information on the numbers of abortions by month and by county where performed, the minors' ages, the duration of the pregnancies, the types of abortion procedures, the numbers of prior abortions or deliveries where known, and the numbers of abortions performed pursuant to each of subdivision (c), (d), (e), (f), (h), (i), or (j). The annual statistical report shall be made

available to county public health officials, Members of the Legislature, the Governor, and the public.

(o) Any person who performs an abortion on an unemancipated minor and in so doing knowingly or negligently fails to comply with the provisions of this section shall be liable for damages in a civil action brought by the unemancipated minor, her legal representative, or by a parent wrongfully denied notification. The time for commencement of the action shall be within four years of the date the minor attains majority or four years of the date a parent wrongfully denied notification discovers or reasonably should have discovered the failure to comply with this section, whichever period expires later. A person shall not be liable under this section if the person establishes by written or documentary evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the unemancipated minor or other persons regarding information necessary to comply with this section were bona fide and true. At any time prior to the rendering of a final judgment in an action brought under this subdivision, the plaintiff may elect to recover, in lieu of actual damages, an award of statutory damages in the amount of ten thousand dollars (\$10,000). In addition to any damages awarded under this subdivision, the plaintiff shall be entitled to an award of reasonable attorney fees. Nothing in this section shall abrogate, limit, or restrict the common law rights of parents, or any right to relief under any theory of liability that any person or any state or local agency may have under any statute or common law for any injury or damage, including any legal, equitable, or administrative remedy under federal or state law, against any party, with respect to injury to an unemancipated minor from an abortion.

(p) Other than an unemancipated minor who is the patient of a physician, or other than the physician or the physician's agent, any person who knowingly provides false information to a physician or a physician's agent for the purpose of inducing the physician or the physician's agent to believe that pursuant to this section notice has been or will be delivered to a parent or adult family member, or that a waiver of notice has been obtained, or that an unemancipated minor patient is not an unemancipated minor, is guilty of a misdemeanor punishable by a fine of up to two thousand dollars (\$2,000).

(q) Notwithstanding any notice or waivers of notice, except where the particular circumstances of a medical emergency or her own mental incapacity precludes obtaining her consent, a physician shall not perform or induce an abortion upon an unemancipated minor except with the consent of the unemancipated minor herself.

(r) Notwithstanding any notice or waivers of notice, an unemancipated minor who is being coerced by any person through force, threat of force, or threatened or actual deprivation of food or shelter to consent to undergo an abortion may apply to the juvenile court for relief. The court shall give the matter expedited consideration and grant such relief as may be necessary to prevent such coercion.

(s) This section shall not take effect until 90 days after the election in which it is approved. The Judicial Council shall, within these 90 days, prescribe the rules, practices, and procedures and prepare and make available any forms it may prescribe as provided in subdivision (k). The State Department of Health Services shall, within these 90 days, prepare and make available the forms prescribed in subdivisions (c), (d), and (l).

(t) If any one or more provision, subdivision, sentence, clause, phrase or word of this section or the application thereof to any person or circumstance is found to be unconstitutional or invalid, the same is hereby declared to be severable and the balance of this section shall remain effective notwithstanding such unconstitutionality or invalidity. Each provision, subdivision, sentence, clause, phrase, or word of this section would have been approved by voters irrespective of the fact that any one or more provision, subdivision, sentence, clause, phrase, or word might be declared unconstitutional or invalid.

(u) Except for the rights, duties, privileges, conditions, and limitations specifically provided for in this section, nothing in this section shall be construed to grant, secure, or deny any other rights, duties, privileges, conditions, and limitations relating to abortion or the funding thereof.

## PROPOSITION 5

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends, and adds sections to various codes, and repeals a section of uncodified law; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be

added are printed in *italic type* to indicate that they are new.

## PROPOSED LAW

### SECTION 1. Title.

This act shall be known and may be cited as the "Nonviolent Offender Rehabilitation Act of 2008."

### SEC. 2. Findings and Declarations.

The people of the State of California hereby find and declare all of the following:

#### I. Failure to Provide Effective Rehabilitation is a Costly Mistake

(a) California's prison system has failed in its mission to rehabilitate criminals and protect public safety.

(b) State prisons are severely overcrowded and highly unsafe, currently with 175,000 inmates squeezed into facilities designed for about 100,000. Many of these inmates entered prison for nonviolent crimes and for nonviolent parole violations.

(c) Drug addiction is a leading cause of crime in California, with high prevalence among arrestees, prisoners and parolees. Moreover, untreated addiction is deadly: drug overdose is the second leading cause of accidental death in the United States and disproportionately impacts persons recently released from jail and prison.

(d) Punishment alone largely fails to change nonviolent criminal behavior, particularly when such behavior is driven by addiction and lack of basic education and skills.

(e) California's corrections system does not provide meaningful rehabilitation services to most inmates and parolees. Nonviolent offenders can languish for years behind bars without education, vocational training, or rehabilitation programs of any kind. These inmates are then released into our communities without access to meaningful services, and with no skills or opportunities to help them safely and successfully be reintegrated into society.

(f) California's criminal justice system fails to offer effective drug treatment to tens of thousands of nonviolent offenders each year whose drug offenses and other criminal activity are driven by substance abuse and addiction. Moreover, courts are required to spend scarce resources on processing routine cases of adult marijuana possession, a waste of resources that can be curtailed by penalizing small amounts of marijuana possession as an infraction.

(g) California now offers virtually no publicly funded drug treatment options for youth under the age of 18, a tragic and short-sighted failure, in that young people with drug problems are at the highest risk to lead lives of addiction and criminality as adults. New sources of funding must be found for youth programs. At the same time, youth under the age of 18 who are arrested for possession of marijuana should receive appropriate, science-based drug education programs.

(h) California spends excessive time and resources monitoring nonviolent former inmates. Many states require much less supervision for low-risk offenders and have lower recidivism rates. Parole supervision should be targeted to more dangerous offenders, with serious or violent criminals given heightened parole supervision.

(i) High rates of incarceration and re-incarceration result, in part, from lack of appropriate treatment and rehabilitation options for youth and nonviolent offenders. Moreover, prison overcrowding makes rehabilitation almost impossible, and the lack of rehabilitation for nonviolent prisoners and parolees contributes directly to recidivism and re-incarceration of recently released inmates.

(j) Studies show that providing drug treatment and rehabilitation services to youth, to nonviolent offenders, and to nonviolent prisoners and parolees is an effective strategy to reduce future criminality and recidivism.

(k) In light of the crisis in California's prison system, Californians need and demand a major reorientation of state policies to provide greater rehabilitation, accountability and treatment options for youth, nonviolent offenders and nonviolent prisoners and parolees.

#### II. Treatment and Rehabilitation Enhance Public Safety

(a) Public safety is enhanced when young people are offered drug education and treatment, including family counseling, upon the first signs of a substance abuse problem.

(b) Public safety is enhanced when nonviolent, addicted offenders receive effective drug treatment and mental health services, instead of incarceration.

(c) Public safety is enhanced when nonviolent prisoners and parolees participate in effective rehabilitation programs designed to assist them in a successful reintegration into society.



(d) Public safety and institutional safety are enhanced when prisons are not forced to house more inmates than they were designed to hold. Rehabilitation programs have more successful outcomes when there is adequate space for programs and a minimum of lockdowns that impede such programs. Further, rehabilitation programs achieve better results when inmates have incentive to participate in and complete such programs.

(e) Public safety is enhanced when probation and parole officers oversee manageable caseloads and can focus on serious and violent offenders.

(f) California can protect public safety, save hundreds of millions of dollars, and reduce the unnecessary incarceration of nonviolent offenders by:

- (1) expanding treatment opportunities for youth;
- (2) diverting nonviolent offenders to treatment and providing incentives for them to complete such treatment;
- (3) creating incentives for nonviolent inmates to behave in prison and to participate in and complete meaningful rehabilitation programs; and
- (4) focusing parole resources on more dangerous offenders, and extending the period of supervision for such offenders, while providing effective rehabilitation programs for parolees.

### III. Oversight and Accountability Are Critical for Individual Offenders and for Systems

(a) Offenders participating in rehabilitation and treatment programs in the criminal justice system must be held accountable by courts and parole authorities through the use of regular status hearings and structured responses to problems during treatment and rehabilitation.

(b) The criminal justice system must recognize that addiction, by definition, is a chronic, relapsing disease, and that addiction, standing alone, is not a behavioral problem for which punishment is appropriate. Punishing addiction has not worked and has proven counterproductive. Accordingly, it is incumbent upon criminal justice professionals to adhere to scientific research and clinical best practices that, among other things, recognize the various stages of recovery, endorse the use of incentives to improve treatment success rates, and sharply curtail the types and severity of sanctions used to respond to problems in treatment.

(c) Oversight and evaluation of treatment and rehabilitation programs is essential to ensure that appropriate programs are offered and best practices are adopted. To this end, independent researchers should study treatment and rehabilitation programs for youth, nonviolent offenders, inmates and parolees, and should report those results to the public. In addition, government agencies implementing new treatment and rehabilitation programs should be monitored and guided by independent commissions and authorities, with public input, to keep these efforts transparent and responsive to the public.

### IV. Treatment and Rehabilitation Are Already a Proven Success; Programs Should Be Improved and Expanded

(a) Broadly based rehabilitation programs for nonviolent offenders in California are a proven success. In November 2000, the people approved Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, requiring community-based drug treatment instead of incarceration for nonviolent drug possession offenders.

(b) Since its passage in 2000, Proposition 36 has offered treatment to over 190,000 nonviolent drug possession offenders. It has guided roughly 36,000 people into treatment each year.

(c) The treatment success rate for Proposition 36 is on a par with success rates found for some of the most effective treatment systems studied in California and across America.

(d) Independent studies by researchers at the University of California, Los Angeles, show that Proposition 36 saves taxpayers between \$2.50 and \$4.00 for every \$1.00 invested in the program. Overall, the program saved taxpayers nearly \$1.8 billion during the first six years of the new law's implementation.

(e) Despite its success, Proposition 36 treatment programs are not funded adequately. As a result, people in the program all too often receive less treatment, or the wrong kind of treatment. Two studies released in 2006 indicated that funding should be at least \$228 million to \$256 million, however, less than half the suggested amount was appropriated for fiscal year 2007–08, and counties are now sharply curtailing the type, intensity, and quality of treatment offered. California is better served by adequately investing in cost-effective treatment for nonviolent offenders.

(f) Several other states have successfully reduced recidivism by former inmates by providing rehabilitation programs before and after release from prison. Small-scale efforts in recent years in California have been less successful, due to the limited scope of the programs and the substantial barriers to implementation of those programs.

(g) It is time to expand drug treatment diversion pioneered by Proposition

36, and to coordinate, cohere, supervise, and, where appropriate, universalize multiple independent programs.

(h) California must commit to providing effective treatment to low-level offenders caught up in the criminal justice system and continue this commitment to rehabilitation for persons who are incarcerated, and after their release. The failure to seize these opportunities to address some of the root causes of criminal behavior risks the return of many offenders to the criminal justice system.

(i) Existing laws allowing people suffering from addiction to be prematurely terminated from treatment and incarcerated due to foreseeable relapses or problems should be amended to promote continued treatment, provided that a person is not committing additional crimes.

(j) The use of jail time to punish relapses and misbehavior during the treatment period has never been proved effective, and therefore should be reserved only for those people who are at imminent risk of being terminated from probation and treatment, and only after incentives and graduated sanctions have failed.

(k) Community-based treatment should be an option for a wider range of nonviolent offenders than covered by Proposition 36, provided that the offender's conduct is found to result primarily from the offender's underlying substance abuse problems. Where such offenders are afforded treatment instead of incarceration, the criminal justice system should be given additional tools and resources to provide effective treatment, ensure offender accountability, and prevent future criminality.

(l) In 2006, the Legislature passed a bill known as Senate Bill 1137 (Chapter 63, Statutes of 2006) attempting to amend Proposition 36. The proposed amendments, however, were enjoined by a court as likely unconstitutional because they conflict with the original measure. If the amendments are eventually ruled invalid, the legislation calls for them to be placed before the electors. In considering this measure, the people are considering substantially similar legislation, and therefore declare it unnecessary and undesirable for the 2006 legislation to be referred to the ballot.

### SEC. 3. Purposes and Intent.

The people hereby declare that the intents and purposes of this measure are to:

(a) Prevent crime, promote addiction recovery, provide rehabilitation services and restorative justice programs, and heighten accountability for youth and nonviolent offenders.

(b) Reduce prison overcrowding and use prison beds primarily for serious and violent offenders and sex offenders, who pose the greatest risks to our communities.

(c) Create a continuum of care providing drug treatment and related services for at-risk youth and for people entering treatment through the court system, with graduated steps tied to the severity of a person's substance abuse problems and criminal history, beginning with programs under Section 1000 of the Penal Code.

(d) Create a continuum of care providing rehabilitation programs for prison inmates, parolees and former parolees, with the goal of reducing recidivism and preventing future criminal activity by offering appropriate services whenever they are necessary.

(e) Preserve valuable court resources currently spent processing adults caught possessing marijuana for personal use by penalizing possession of small amounts of marijuana for personal use as an infraction with a fine, diverting young people caught using marijuana into appropriate science-based drug education programs, and providing additional money for youth programs through the re-direction of fines paid by people caught possessing marijuana.

(f) Limit the use of state prisons to punish minor parole violations by nonviolent parolees, provided that such parolees have never committed a serious or violent felony, a sex offense requiring registration, or a gang crime.

(g) Provide appropriate incentives and rewards for nonviolent offenders, prisoners and parolees who participate in treatment and rehabilitation, to encourage participation and completion of such programs.

(h) Improve the efficacy of our criminal justice system by making appropriate treatment and rehabilitative services a major focus in the processing of nonviolent offenders.

(i) Transform the culture of our state corrections system by elevating the mission of rehabilitation of prisoners and former inmates and integrating that mission with parole through creating new rehabilitation positions, including a new secretary at the Department of Corrections and Rehabilitation.

(j) Extend parole supervision for serious and violent offenders, and to reduce parole caseloads so that parole officers can focus on more dangerous offenders.

(k) Refocus parole supervision for nonviolent offenders to prioritize their re-integration into society, free from lives of addiction and crime.

(l) Fund adequately and to ensure effective, high-quality treatment and rehabilitation programs for all of the populations referenced herein.

(m) Provide a range of programs and incentives for nonviolent offenders, prison inmates and parolees, without limiting the range of programs or incentives that may be offered to persons who do not qualify under the terms of this measure.

(n) Prevent overdose death and morbidity by offering overdose awareness and prevention education to inmates in county jails.

(o) Ensure independent oversight and guidance to government agencies charged with implementing the programs outlined in this act by appointing diverse groups of stakeholders to help serve as the public's eyes, ears, and voices in shaping and monitoring the implementation of the act.

(p) Strengthen California's drug courts by adequately funding those courts, permitting those courts to fashion their own eligibility criteria and operating procedures, and holding them accountable by requiring those courts, for the first time, to systematically collect and report data regarding their budgets, expenditures, operations, and treatment outcomes.

(q) Provide voters with the final say on these matters at the time of the election on this measure, and to therefore strike a provision of Senate Bill 1137 (Chapter 63, Statutes of 2006) that might otherwise require a future election on substantially the same subject.

SEC. 4. Addition of a Secretary of Rehabilitation and Parole to the Department of Corrections and Rehabilitation.

SEC. 4.1. Section 12838 of the Government Code is amended to read:

12838. (a) There is hereby created in state government the Department of Corrections and Rehabilitation, to be headed by ~~a secretary, who shall be two secretaries who shall be known as the Secretary of Rehabilitation and Parole and the Secretary of Corrections. The Secretary of Rehabilitation and Parole shall be appointed by the Governor no later than February 1, 2009, subject to Senate confirmation, and shall serve a six-year term. The Secretary of Corrections shall be appointed by the Governor, subject to Senate confirmation, and shall serve at the pleasure of the Governor. The secretaries shall be eligible for reappointment.~~ The Department of Corrections and Rehabilitation shall consist of Adult Operations, Adult Programs, Juvenile Justice, the Corrections Standards Authority, ~~the Board of Parole Hearings,~~ the State Commission on Juvenile Justice, the Prison Industry Authority, ~~and the Prison Industry Board,~~ and Parole Policy, Programs and Hearings, to include the Board of Parole Hearings. The duties of the two secretaries shall be divided as follows:

(1) The Secretary of Rehabilitation and Parole shall have primary responsibility for parole policies and rehabilitation programs, including all such programs operated by the department, whether inside prison or outside, at the effective date of this act, and shall exercise duties such as those set forth in Sections 4056.5 and 5060 of the Penal Code.

(2) The Secretary of Corrections shall have primary responsibility for institutions and shall exercise duties such as those set forth in Sections 5054.1, 5054.2, 5061, 5062, 5063, and 5084 of the Penal Code.

(3) The Legislature shall, by a majority vote, delineate the responsibilities of the secretaries consistent with the purposes and intents of their respective positions.

(b) The Governor, upon recommendation of the ~~secretary secretaries~~, may appoint two undersecretaries of the Department of Corrections and Rehabilitation, subject to Senate confirmation. The undersecretaries shall hold office ~~for a term of five years at the pleasure of the Governor.~~ One undersecretary shall oversee program support and the other undersecretary shall oversee program operations for the department. ~~The undersecretaries serving at the effective date of this act shall continue to serve at the pleasure of the Governor.~~

(c) The Governor, upon recommendation of the ~~secretary secretaries~~, shall appoint three chief deputy secretaries, subject to Senate confirmation, who shall hold office ~~for a term of five years at the pleasure of the Governor.~~ One chief deputy secretary shall oversee adult operations, one chief deputy secretary shall oversee adult programs, and one chief deputy secretary shall oversee juvenile justice for the department. ~~The chief deputy secretaries serving at the effective date of this act shall continue to serve at the pleasure of the Governor.~~

(d) The Governor, upon recommendation of the ~~secretary secretaries~~, shall appoint an assistant secretary, subject to Senate confirmation, who shall be responsible for health care policy for the department, and shall serve at the pleasure of the Governor.

(e) The Governor, upon recommendation of the ~~secretary secretaries~~, shall

appoint an Assistant Secretary for Victim and Survivor Rights and Services, and an Assistant Secretary for Correctional Safety, who shall serve at the pleasure of the Governor.

SEC. 5. Section 12838.1 of the Government Code is amended to read:

12838.1. (a) There is hereby created within the Department of Corrections and Rehabilitation, under the Chief Deputy Secretary for Adult Operations, the Division of Adult Institutions ~~and the Division of Adult Parole Operations.~~ ~~Each~~ The division shall be headed by a division chief, who shall be appointed by the Governor, upon recommendation of the ~~secretary secretaries~~, subject to Senate confirmation, who shall serve at the pleasure of the Governor.

(b) The Governor shall, upon recommendation of the ~~secretary secretaries~~, appoint five subordinate officers to the Chief of the Division of Adult Institutions, subject to Senate confirmation, who shall serve at the pleasure of the Governor. Each subordinate officer appointed pursuant to this subdivision shall oversee an identified category of adult institutions, one of which shall be female offender facilities.

SEC. 6. Section 12838.2 of the Government Code is amended to read:

12838.2. (a) There is hereby created within the Department of Corrections and Rehabilitation, under the Chief Deputy Secretary for Adult Programs, the Division of Community Partnerships, the Division of Education, Vocations and Offender Programs, and the Division of Correctional Health Care Services. Each division shall be headed by a chief who shall be appointed by the Governor, at the recommendation of the ~~secretary secretaries~~, subject to Senate confirmation, who shall serve at the pleasure of the Governor.

(b) ~~There is hereby created within the Department of Corrections and Rehabilitation, under the Secretary of Rehabilitation and Parole, the Division of Parole Policy, Programs and Hearings, which, notwithstanding any other law, shall include the Board of Parole Hearings and the Adult Parole Operations Authority, and which shall retain all of the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the former Division of Adult Parole Operations. The division shall be headed by a chief who shall be appointed by the Governor, upon recommendation of the Secretary of Rehabilitation and Parole, and who shall serve a five-year term and who shall be eligible for reappointment. The Secretary of Rehabilitation and Parole shall ensure that the Division of Parole Policy, Programs and Hearings fully coordinates activities, as appropriate, with the other divisions under his or her direct authority, as well as with other divisions of the department, with the goal of successful reintegration of former inmates into society.~~

(c) There is hereby created within the Department of Corrections and Rehabilitation, under the Secretary of Rehabilitation and Parole, the Division of Research for Recovery and Re-Entry Matters. This division shall be headed by a chief who shall be appointed by the Secretary of Rehabilitation and Parole, who shall serve a five-year term, and who shall be eligible for reappointment. This division shall coordinate data collection and publish information about the department's rehabilitation programs consistent with the mandates of the Parole Reform Oversight and Accountability Board. Nothing in this section precludes the Legislature, by majority vote, from creating additional divisions under the Secretary of Rehabilitation and Parole.

SEC. 7. Section 12838.4 of the Government Code is amended to read:

12838.4. The Board of Parole Hearings is hereby created. The Board of Parole Hearings shall be comprised of ~~17~~ 29 commissioners, who shall be appointed by the Governor, ~~upon recommendation of the Secretary of Rehabilitation and Parole, subject to Senate confirmation,~~ for three-year terms. The Board of Parole Hearings hereby succeeds to, and is vested with, all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the following entities, which shall no longer exist: Board of Prison Terms, Narcotic Addict Evaluation Authority, and Youthful Offender Parole Board. For purposes of this article, the above entities shall be known as "predecessor entities." ~~Notwithstanding this section, commissioners who are serving on the Board of Parole Hearings on the effective date of this act shall serve the remainder of their terms.~~

SEC. 8. Section 12838.7 of the Government Code is amended to read:

12838.7. (a) ~~The Secretary Secretaries~~ of the Department of Corrections and Rehabilitation shall serve as the Chief Executive ~~Officer~~ Officers of the Department of Corrections and Rehabilitation and shall have all of the powers and authority within their respective jurisdictions, as delineated by the Legislature pursuant to the terms of subdivision (a) of Section 12838, which are conferred upon a head of a state department by Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Without limiting any other powers or duties, the ~~secretary secretaries~~



shall assure compliance with the terms of any state plan, memorandums of understanding, administrative order, interagency agreements, assurances, single state agency obligations, federal statute and regulations, and any other form of agreement or obligation that vital government activities rely upon, or are a condition to, the continued receipt by the department of state or federal funds or services. This includes, but is not limited to, the designation, appointment, and provision of individuals, groups, and resources to fulfill specific obligations of any agency, board, or department that is abolished pursuant to Section 12838.4 or 12838.5.

SEC. 9. Section 12838.12 of the Government Code is amended to read:

12838.12. (a) Any officer or employee of the predecessor entities who is engaged in the performance of a function specified in this reorganization plan and who is serving in the state civil service, other than as a temporary employee, shall be transferred to the Department of Corrections and Rehabilitation pursuant to the provisions of Section 19050.9.

(b) Any officer or employee of the continuing entities who is engaged in the performance of a function specified in this reorganization plan and who is serving in the state civil service, other than as a temporary employee, shall continue such status with the continuing entity pursuant to the provisions of Section 19050.9.

(c) The status, position, and rights of any officer or employee of the predecessor entities shall not be affected by the transfer and shall be retained by the person as an officer or employee of the Department of Corrections and Rehabilitation, as the case may be, pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except as to a position that is exempt from civil service.

(d) *It is the intent of the people that, to the extent permitted by law, any positions created pursuant to this act under the Secretary for Rehabilitation and Parole shall be occupied by the same category of rehabilitation personnel, sworn peace officers and other employees employed by the department to provide services prior to this act, and that the status, position, and rights of any officer or employee of the Department of Corrections and Rehabilitation shall not be affected by the structural changes to the department required by the act, and officers and employees shall be retained by the department pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except as to a position that is exempt from civil service.*

SEC. 10. Section 12838.13 of the Government Code is amended to read:

12838.13. This article, *as amended*, shall become operative as of July 1, 2005 2009, except that the Secretary of Rehabilitation and Parole shall be appointed by February 1, 2009, as provided.

SEC. 11. Section 1210 of the Penal Code is amended to read:

1210. As used in Sections 1210.01 to 1210.05, inclusive, and Sections 1210.1, 1210.2 and 3063.1 of this code, and Division 10.8 (commencing with Section 11999.4) of the Health and Safety Code, the following definitions apply:

(a) The term "nonviolent drug possession offense" means the unlawful personal use, possession for personal use, or transportation for personal use, or being under the influence, of any controlled substance identified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code, or of any controlled substance analog as defined in Section 11401 of the Health and Safety Code, or the offense of being under the influence of a controlled substance in violation of Section 11550 of the Health and Safety Code, or of any drug paraphernalia offense as defined in Section 11364 of the Health and Safety Code or Section 4140 of the Business and Professions Code. The term "nonviolent drug possession offense" does not include the possession for sale, transportation for sale, production, or manufacturing of any controlled substance and does not include violations of Section 4573.6 or 4573.8. *A jury's determination that a defendant is guilty of simple possession is a dispositive finding that the defendant is eligible for probation under this act absent other disqualifying factors set forth in separate sections of the act. People v. Dove, 124 Cal.App.4th 1 (2004), is hereby nullified.*

(b) The term "drug treatment program," "interim treatment program," or "drug treatment" means a state licensed or certified community drug treatment program, which may include one or more of the following: ~~science-based drug education, outpatient services, medication-assisted treatment~~ ~~narcotic replacement therapy~~, residential treatment, ~~mental health services~~ ~~detoxification services~~, and aftercare or continuing care services. The term "drug treatment program" or "drug treatment" includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001. That type of program shall be eligible to provide drug treatment services

without regard to the licensing or certification provisions required by this subdivision. *Detoxification services in a noncustodial setting, and/or mental health services, may be provided as a part of drug treatment as defined in this subdivision, but neither service shall be deemed sufficient to serve as treatment.* The term "drug treatment program" or "drug treatment" does not include drug treatment programs offered in a prison, or jail, or other custodial facility.

(c) *The term "medication-assisted treatment" means the medically indicated and medically managed use of any prescription medication, with the defendant's consent, as a part of drug treatment, or as a complement or supplement to such treatment. Examples include, but are not limited to, the use of antipsychotics, relapse prevention medications, mood stabilizers, and opioid agonists, including methadone and buprenorphine. Drugs or medicines used as a part of medication-assisted treatment are presumptively a legitimate and allowable expense in addition to the costs of treatment services.*

(d) *The term "harm reduction therapy" or "harm reduction services" means programs guided by a public health philosophy which promotes methods of reducing the physical, social, emotional, and economic harms associated with drug misuse and other harmful behaviors on individuals, their families, and their communities. Harm reduction therapy recognizes that people use drugs, including alcohol, for a variety of reasons, and strives for an integrated treatment approach that addresses the complex relationship that people develop with psychoactive substances over the course of their lives, in the context of the social and occupational impacts and psychological and emotional implications of their substance misuse. Harm reduction programs are free of judgment or blame and directly involve the client in setting his or her own goals.*

(e) *(e) The term "successful completion of treatment" means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment as recommended by the treatment provider and ordered by the court and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future. Completion Successful completion of treatment shall not require cessation of narcotic replacement therapy; termination or detoxification from medication-assisted treatments, or other medications which the court may verify to be taken pursuant to a valid prescription or otherwise taken consistent with state law.*

(f) *(f) The term "misdemeanor not related to the use of drugs" means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in (1).*

(g) *The term "clinical assessment" means an evaluation performed by a qualified health care professional or drug treatment professional certified by the State Department of Alcohol and Drug Programs, pursuant to regulations approved by the Oversight Commission, using a standardized tool to determine an individual's social and educational history, drug use history, addiction severity, and other factors indicating the individual's needs and the appropriate course of drug treatment, including opioid agonist treatment. When appropriate, a clinical assessment may include a separate evaluation of mental health needs and/or psychiatric and psychological factors.*

(h) *The term "criminal history evaluation" means a report by a probation department or other entity appointed by the court detailing a defendant's history of arrest, conviction, incarceration, and recidivism. Such an evaluation may include opinions or recommendations regarding the risk of recidivism by the defendant and appropriate monitoring conditions for the defendant.*

(i) *The term "addiction training" shall mean an educational program about drug abuse and addiction intended for an audience of persons working with defendants placed into treatment under the terms of this act. The objectives and content of addiction training programs shall be established by the State Department of Alcohol and Drug Programs in collaboration with a statewide association of physicians specializing in addiction and with the Judicial Council; provided, however, that one required portion of every addiction training course shall consist of education regarding opioid addiction and opioid agonist therapies and one portion shall cover principles and practices of harm reduction. Such training programs may be paid for from the Substance Abuse Treatment Trust Fund, in an amount approved by the Oversight Commission.*

(j) *"Incentives and rewards" means a response by a treatment provider or by the court to a client's or defendant's progress, attainment of certain goals or benchmarks, or other good behavior in the course of treatment pursuant to this section, or the promise of such rewards, intended to encourage future progress and good behavior. Counties may spend funds allocated under this*

section to provide a range of such benefits to persons undergoing treatment pursuant to this section, consistent with regulations approved by the Oversight Commission. The State Department of Alcohol and Drug Programs shall annually publish a list of examples of appropriate incentives and rewards.

(k) The term “drug-related condition of probation” shall be interpreted broadly and shall include, but not be limited to, a probationer’s specific drug treatment regimen, employment, vocational training, educational programs, psychological counseling, and family counseling.

(l) “Graduated sanction” means a response by a treatment provider or by the court to a client’s or defendant’s misbehavior, probation violations or relapse during treatment, intended to hold a person accountable for his or her actions, provide a negative consequence, and deter future problems from occurring. Sanctions are graduated in that they begin with a minimal negative consequence and become more onerous with additional misbehavior, violations, or relapses. Examples may include, but not be limited to, requiring additional visits to treatment, increased frequency of drug testing, attendance at a greater number of court sessions, or community service. The State Department of Alcohol and Drug Programs shall annually publish a list of examples of appropriate sanctions. Graduated sanctions do not include jail sanctions.

(m) “Jail sanction” means the imposition of a term of incarceration in a county jail in response to a defendant’s misbehavior or probation violations. The length of time allowable for a jail sanction may be specified by statute; otherwise, no jail sanction shall exceed 10 days. Imposition of a jail sanction does not require, or imply, the termination of drug treatment.

When determining whether to impose jail sanctions, the court shall consider, among other factors, the seriousness of the violation, previous treatment compliance, employment, education, vocational training, medical conditions, medical treatment, including opioid agonist treatment, and including the opinion of the defendant’s licensed and treating physician if available and presented at the hearing, child support obligations, and family responsibilities. The court shall also consider whether illicit drugs are available in the county’s jail, the prevalence of drug use therein, and any documented impact of drug-related harms resulting from drug use in jail.

(n) “Youth programs” means noncustodial programs and services for youth under the age of 18 who are considered to be nonviolent and at risk of committing future drug offenses, pursuant to guidelines established by the Oversight Commission. Services may include, but shall not be limited to: drug treatment programs; family therapy for the youth, parent, guardian or primary caregiver; mental health counseling; psychiatric medication, counseling and consultation; education stipends for fees at university, college, technical or trade schools; employment stipends; and transportation to any of these services.

SEC. 12. Section 1210.01 is added to the Penal Code, to read:

1210.01. Assessment of Defendants Prior to Charging or Eligibility Determination.

(a) Notwithstanding any other provision of law, the court may order a clinical assessment and/or criminal history evaluation for any person arrested for an offense that might result in diversion and treatment under Track I, Track II, or Track III, as provided in Sections 1210.03 to 1210.05, inclusive, Section 1210.1, and Section 1210.2. The costs of the clinical assessment shall be reimbursable from funds provided pursuant to this act. The defendant shall have the right to counsel and may refuse the clinical assessment and/or any interview for the criminal history evaluation until after the arraignment and a plea is entered.

(b) For any defendant who does appear for a clinical assessment or criminal history evaluation, no statement made by the defendant, or any information revealed during the course of the assessment or evaluation with respect to the specific offense with which the defendant is charged shall be admissible in any action or proceeding brought subsequently, including a sentencing hearing.

SEC. 13. Section 1210.02 is added to the Penal Code, to read:

1210.02. Treatment Placement, Monitoring Conditions, Payment, Judicial Training.

(a) Any defendant found eligible for treatment diversion under Track I, Track II, or Track III shall be placed into appropriate treatment and shall have monitoring conditions imposed consistent with the following terms:

(1) In determining an appropriate treatment program, the court must rely upon the clinical assessment of the defendant.

Prior to a final determination of the appropriate treatment program and the availability of such a program for the defendant, the court may order the defendant to attend any available treatment program that partly serves the defendant’s needs as an interim measure for purposes of quickly engaging the

defendant in treatment, provided that such an interim placement shall be for no more than 60 days. Defendants who refuse to attend such an interim treatment program shall not accrue violations of drug-related conditions of probation until placement in an appropriate treatment program. Defendants who participate in an interim treatment program shall not accrue program violations or violations of drug-related conditions of probation while attending an interim placement. The court shall credit the time that the defendant attends an interim treatment program toward the overall period of treatment required.

(2) The court shall refer the defendant to opioid agonist treatment or other medication-assisted treatments where the clinical assessment indicates the need for such treatment.

(3) In determining the appropriate monitoring conditions and requirements imposed upon the defendant, the court must rely upon the criminal history evaluation and clinical assessment.

(4) A defendant may request to be referred to a drug treatment program in any county.

(5) Any defendant who is participating in a treatment program in Track I, Track II, or Track III may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. The results of such analysis may be used solely as a treatment tool to tailor the response of the treatment program and the court to the defendant’s relapse. Such results shall be given no greater weight than any other aspects of the defendant’s individual treatment program. Results of such testing shall not be admissible as a basis for any new criminal prosecution or proceeding, nor shall such results be cause, in and of themselves, for the court to enter judgment in a case where the defendant has had entry of judgment deferred under Track I diversion, or for the court to find that a violation of probation has occurred. A court may consider a test result as positive only if the laboratory performing such analysis utilized the following procedures and standards: validity testing, initial and confirmation testing, cutoff concentrations, dilution and adulteration criteria, and split specimen procedures.

(6) No person otherwise eligible for treatment shall be denied access to treatment due to the presence of a co-occurring psychiatric or developmental disorder or language barrier, nor shall an eligible defendant be required to cease the use of any medication-assisted treatments, or other medications taken pursuant to a valid prescription or otherwise taken consistent with state law, subject to court verification.

(7) In addition to any fine assessed under other provisions of law, the trial judge may require any person placed in Track I, Track II, or Track III treatment who is reasonably able to do so to contribute to the cost of his or her own placement in an appropriate drug treatment program, detoxification services, or urinalysis, provided that:

(A) Failure to pay such costs shall not be grounds for a treatment provider to refuse to report a client’s completion of a program.

(B) Failure to pay such costs shall not be grounds for a court to deny dismissal of charges, indictment, complaint, or conviction.

(C) Failure to pay such costs shall not be grounds to refuse to seal records upon satisfactory performance or successful completion of treatment under Track I or II, respectively.

(D) Before or after the completion of treatment, the court may require community service as an alternative to the payment of outstanding fees, fines, or court costs, or may use administrative or civil methods to require payment of any outstanding amount.

(E) A person who is unable to pay the cost of his or her placement in a drug treatment program shall not be deprived of appropriate drug treatment or urinalysis ordered by the court.

(8) The court may also require participation in educational programs, vocational training, family counseling, health care, including mental health services, literacy training and/or community service, harm reduction services, and any other services that may be identified as appropriate by the clinical assessment of the defendant or through other evaluations of the defendant’s needs.

(b) After July 1, 2010, every judge regularly presiding over a Track I, Track II, or Track III diversion case after a defendant is ordered to appear for a clinical assessment shall annually complete an addiction training course.

SEC. 14. Section 1210.03 is added to the Penal Code, to read:

1210.03. Track I. Treatment Diversion with Deferred Entry of Judgment.

(a) Notwithstanding any other provision of law, drug treatment shall be provided to eligible defendants. A defendant is eligible for the disposition options, sanctions, and treatment programs of Track I diversion if:

(1) The defendant is charged with one or more nonviolent drug possession

offenses.

(2) The defendant has never been convicted of an offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony.

(3) The defendant has no prior conviction for any felony, other than a single nonviolent drug possession offense, within five years prior to the alleged commission of the charged offense.

(4) The defendant is not charged with any other offense that is not a nonviolent drug possession offense.

(b) A defendant who is not eligible solely because of a concurrent charge for another offense as provided in paragraph (4) of subdivision (a), whether in the same or another case, in the same or another jurisdiction, may be deemed eligible for Track I treatment pursuant to this section if the court determines that it is in the interest of the defendant and in the furtherance of justice to permit deferred entry of judgment.

(c) A defendant may refuse Track I treatment. No defendant shall be ruled ineligible for Track I treatment solely because of failure to complete a diversion program offered pursuant to Section 1000.

(d) A defense attorney, a prosecuting attorney, or the court on its own motion, may request Track I treatment diversion for any defendant when it appears that the defendant meets the criteria set forth in subdivision (a) or the court has made the findings specified in subdivision (b). The court shall order an evidentiary hearing in any case in which there is a dispute as to the defendant's eligibility for Track I treatment diversion. The prosecution shall have the burden to prove that the defendant is not eligible. If the defendant is found ineligible, the court shall state the grounds for so finding on the record.

(e) If the court determines that a defendant is eligible for Track I treatment diversion, the court shall provide the following to the defendant and his or her attorney:

(1) A full description of the procedures for Track I treatment diversion, including any waivers required of the defendant, the defendant's right to refuse the program, the defendant's rights during the program, the potential duration of the program, the benefits a defendant may expect for completing the program, and the consequences of failure to complete the program.

(2) A general explanation of the roles and authorities of the probation department, the prosecuting attorney, the program, and the court in the process. An explanation of criminal record retention and disposition resulting from participation in the deferred entry of judgment program and the defendant's rights relative to answering questions about his or her arrest and deferred entry of judgment following successful completion of the program.

(f) If the defendant consents and waives his or her right to a speedy trial or a speedy preliminary hearing, the court shall grant deferred entry of judgment if the defendant pleads guilty to the charge or charges and waives time for the pronouncement of judgment.

(g) At the time that deferred entry of judgment is granted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of the defendant shall be exonerated.

(h) At the time deferred entry of judgment is granted, the court shall seal from public view all records and files concerning the qualifying offense, including all records of arrest and detention, for the period the defendant is participating in a treatment program referred to in this section or is on a waiting list for a program referred to in this section.

(i) The court shall order the defendant to appear for a clinical assessment and criminal history evaluation, and shall thereafter order the defendant to attend and complete an appropriate treatment program. If the defendant had a clinical assessment performed prior to a determination of eligibility, the court may order a new assessment. The court shall thereafter place the defendant in treatment and set monitoring conditions consistent with the terms and requirements of Section 1210.02.

(j) If a defendant receives deferred entry of judgment under this section, and has not yet begun treatment within 30 days of the grant of deferred entry of judgment, the court shall conduct a hearing to determine the reasons for the defendant's failure to begin treatment. The court shall consider evidence from the parties, probation department, and treatment provider. At the hearing, the defendant may refuse treatment and deferred entry of judgment.

If the defendant does not refuse treatment, the court may re-refer the defendant to the treatment program and may impose graduated sanctions or may enter judgment for the defendant's failure to start treatment, provided, however, that sanctions shall not be imposed or judgment entered when the defendant's failure to begin treatment resulted from a county's inability to provide appropriate treatment in a timely manner or from the county's failure

to make treatment reasonably accessible, such as the failure to offer child care for a parenting defendant or failure to provide transportation if needed. A defendant for whom judgment is entered due to failure to begin treatment shall be transferred to Track II treatment diversion.

The court shall collect and report all data relevant to a defendant's failure to begin treatment within 30 days, the reasons therefor, and the court's responses, in any form required by the Oversight Commission. Such data regarding treatment show rates shall be published by the department, or researchers designated by the Oversight Commission, on county-by-county and statewide bases, not less than once per year.

(k) The period during which deferred entry of judgment is granted shall be for no less than six months nor longer than 18 months. Progress reports shall be filed with the court by the treatment provider and the probation department as directed by the court.

(l) No statement that is made during the course of treatment or any information procured therefrom, with respect to the specific offense with which the defendant is charged, shall be admissible in any action or proceeding brought subsequently, including a sentencing hearing.

(m) Deferred entry of judgment for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1210.05.

(n) A defendant's plea of guilty pursuant to this chapter shall not constitute a conviction for any purpose unless a judgment of guilty is entered pursuant to Section 1210.04.

(o) During periodic review hearings to evaluate a defendant's progress, the court shall consider the use of incentives and rewards to encourage continued progress, and may impose graduated sanctions in response to problems reported by the treatment provider or probation department, or in the court's discretion, without entry of judgment. The court may not impose a jail sanction on a defendant participating in Track I treatment diversion.

(p) If the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, the criminal charge or charges shall be dismissed and the case records and files shall be permanently sealed, including any record of arrest and detention.

SEC. 15. Section 1210.04 is added to the Penal Code, to read:

1210.04. If it appears to the treatment provider, the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, or the defendant is convicted of a misdemeanor not related to the use of drugs, or the defendant is convicted of a felony that is not a nonviolent drug possession offense, or the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the prosecuting attorney or the court on its own, may make a motion for entry of judgment.

After notice to the defendant, the court shall hold a hearing to determine whether judgment should be entered. If the court finds that the defendant is not performing satisfactorily in the assigned program, or that the defendant is not benefiting from education, treatment, or rehabilitation, or the court finds that the defendant has been convicted of a crime as indicated above, or that the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the court shall render a finding of guilt to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.

In determining whether the defendant has performed satisfactorily or unsatisfactorily in any treatment program, the court shall be guided by the evaluation provided for the court by the qualified treatment professional in charge of the defendant's treatment program, and the treatment provider's opinion as to the prospects for the defendant to return to treatment and continue treatment successfully with changes in the treatment plan.

If the court does not enter judgment, the treatment plan may be amended, and graduated sanctions may be imposed, consistent with the recommendation of the treatment provider.

If the court does enter judgment, the court shall sentence the defendant to Track II probation and treatment, if eligible. If the defendant has committed a new offense that is a misdemeanor not related to the use of drugs or a felony that is not a nonviolent drug possession offense, sentencing is not controlled by this section.

SEC. 16. Section 1210.05 is added to the Penal Code, to read:

1210.05. (a) Any record filed with the Department of Justice shall indicate the disposition in cases deferred pursuant to this chapter. Notwithstanding any other provision of law, upon successful completion of a deferred entry of

judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The defendant shall be advised that, regardless of his or her successful completion of the deferred entry of judgment program, the arrest upon which the judgment was deferred may be disclosed by the Department of Justice in response to any peace officer application request and that, notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

SEC. 17. Section 1210.1 of the Penal Code is amended to read:

1210.1. *Track II. Treatment Diversion After a Conviction.*

(a) Notwithstanding any other provision of law, and except as provided in subdivision (b) (f), any person who is ineligible for Track I deferred entry diversion and is convicted of a nonviolent drug possession offense shall receive probation. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. ~~The court shall impose appropriate drug testing as a condition of probation. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside The court shall order the defendant to appear for a clinical assessment and criminal history evaluation, and shall thereafter order the defendant to attend and complete an appropriate treatment program. If the defendant had a clinical assessment performed prior to a determination of eligibility, the court may order a new assessment. The court shall thereafter place the defendant in treatment and set monitoring conditions consistent with the terms and requirements of Section 1210.02.~~

(b) Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose. Probation shall be imposed by suspending the imposition of sentence. No person shall be denied the opportunity to benefit from the provisions of the Substance Abuse and Crime Prevention Act of 2000 based solely upon evidence of a co-occurring psychiatric or developmental disorder. To

(c) Upon granting probation under subdivision (a), the court shall seal all records and files concerning the qualifying offense, including all records of arrest, detention, and conviction, for the period that the defendant is in treatment or on a waiting list for treatment.

(d) To the greatest extent possible, any person who is convicted of, and placed on probation pursuant to this section for a nonviolent drug possession offense shall be monitored by the court through the use of a dedicated court calendar and the incorporation of a collaborative court model of oversight that includes close collaboration with treatment providers and probation, drug testing commensurate with treatment needs, and supervision of progress through review hearings.

In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

(e) Any person who has been ordered to complete a drug treatment program pursuant to this section shall not be required to comply with the drug offender registration provisions of Section 11590 of the Health and Safety Code during the course of treatment. This exemption will become permanent upon the successful completion of the drug treatment program. Any person convicted of a nonviolent drug offense that was deemed ineligible for participation in or has been excluded from continued participation in this act shall be subject to the provisions of Section 11590 of the Health and Safety Code.

(b) (f) Subdivision (a) shall not apply to any of the following:

(1) Any defendant who previously has been convicted of one or more violent or serious felonies as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, respectively, unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction other than a nonviolent drug possession offense, or a misdemeanor conviction involving physical injury or the threat of physical injury to another person.

(2) Any defendant who, in addition to one or more nonviolent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony that is not a nonviolent drug possession offense, except that with respect to a misdemeanor conviction the court shall have discretion to declare the person eligible for treatment under subdivision (a) and suspend sentencing during participation in drug treatment.

(3) Any defendant who, while armed with a deadly weapon, with the intent to use the same as a deadly weapon, unlawfully possesses or is under the influence of any controlled substance identified in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code.

(4) Any defendant who refuses drug treatment as a condition of probation.

(5) Any defendant who has two separate convictions for nonviolent drug possession offenses, has participated in two separate courses of drug treatment pursuant to subdivision (a), and is found by the court, by clear and convincing evidence, to be unamenable to any and all forms of available drug treatment, as defined in subdivision (b) of Section 1210. Notwithstanding any other provision of law, the trial court shall sentence that defendant to 30 days in jail.

(6) Any defendant who, in the 30 months prior to the current conviction, has five or more convictions for any offense or combination of offenses, including nonviolent drug possession offenses, and not including infractions. A defendant who is ineligible for Track II treatment diversion solely on the basis of this finding shall be eligible for Track III treatment diversion.

(g) No defendant shall be ruled ineligible for Track II treatment because of failure to complete a diversion program offered pursuant to Section 1000.

(c) (1) Any defendant who has previously been convicted of at least three non-drug-related felonies for which the defendant has served three separate prison terms within the meaning of subdivision (b) of Section 667.5 shall be presumed eligible for treatment under subdivision (a). The court may exclude such a defendant from treatment under subdivision (a) where the court, pursuant to the motion of the prosecutor or its own motion, finds that the defendant poses a present danger to the safety of others and would not benefit from a drug treatment program. The court shall, on the record, state its findings, the reasons for those findings.

(2) Any defendant who has previously been convicted of a misdemeanor or felony at least five times within the prior 30 months shall be presumed to be eligible for treatment under subdivision (a). The court may exclude such a defendant from treatment under subdivision (a) if the court, pursuant to the motion of the prosecutor, or on its own motion, finds that the defendant poses a present danger to the safety of others or would not benefit from a drug treatment program. The court shall, on the record, state its findings and the reasons for those findings.

(d) (h) Within seven days of an order imposing probation under subdivision (a), the probation department shall notify the drug treatment provider designated to provide drug treatment under subdivision (a). Within 30 days of receiving that notice, the treatment provider shall prepare a treatment plan and forward it to the probation department for distribution to the court and counsel. The treatment provider shall provide to the probation department standardized treatment progress reports, with minimum data elements as determined by the department, including all drug testing results. At a minimum, the reports shall be provided to the court every 90 days, or more frequently, as the court directs.

(1) If a defendant receives probation under subdivision (a), and has not yet begun treatment within 30 days of the grant of probation, the court shall conduct a hearing to determine the reasons for the defendant's failure to appear at treatment. The court shall consider evidence from the parties, probation department and treatment provider. At the hearing, the defendant may refuse treatment under subdivision (a).

If the defendant does not refuse treatment, the court may re-refer the defendant to the treatment program and may impose graduated sanctions or may revoke the defendant's probation for the defendant's failure to start treatment, provided, however, that sanctions shall not be imposed or probation revoked when the defendant's failure to begin treatment resulted from a county's inability to provide appropriate treatment in a timely manner or from the county's failure to make treatment reasonably accessible, such as the failure to offer child care for a parenting defendant or failure to provide transportation if needed. A defendant whose probation is terminated for failure to begin treatment may be transferred to Track III treatment diversion in the discretion of the court.

The court shall collect and report all data relevant to a defendant's failure to begin treatment within 30 days, the reasons therefor, and the court's

responses, in any form required by the Oversight Commission. Such data regarding treatment show rates shall be published by the department, or researchers designated by the Oversight Commission, on county-by-county and statewide bases, not less than once per year.

(2) During periodic review hearings to evaluate a defendant's progress, the court shall consider the use of incentives and rewards to encourage continued progress, and may impose graduated sanctions in response to problems reported by the treatment provider or probation department, or in the court's discretion, with or without a finding that a violation of probation has occurred.

(3) If at any point during the course of drug treatment the treatment provider notifies the probation department and the court that the defendant is unamenable to the drug treatment being provided, but may be amenable to other drug treatments or related programs, the probation department may move the court to modify the terms of probation, or on its own motion, the court may modify the terms of probation after a hearing to ensure that the defendant receives the alternative drug treatment or program.

(4) If at any point during the course of drug treatment the treatment provider notifies the probation department and the court that the defendant is unamenable to the drug treatment provided and all other forms of drug treatment programs pursuant to subdivision (b) of Section 1210, the probation department may move to revoke probation. At the revocation hearing, the prosecution must prove the defendant is unamenable to all drug treatment programs pursuant to subdivision (b) of Section 1210 if it is proved that the defendant is unamenable to all drug treatment programs pursuant to subdivision (b) of Section 1210, whereupon the court may revoke probation.

(5) Drug treatment services provided by subdivision (a) as a required condition of probation may not exceed 12 months, unless the court makes a finding supported by the record, that the continuation of treatment services beyond 12 months is necessary for drug treatment to be successful. If such a finding is made, the court may order up to two six-month extensions of treatment services. The provision of treatment services under this section the Substance Abuse and Crime Prevention Act of 2000 shall not exceed 24 months.

(6) When the defendant completes the required treatment program, the treatment provider shall notify the court within seven days. The court shall amend the terms of probation to provide for no more than six months of continued supervision after the date of treatment completion. Aftercare or continuing care services may be required and provided during this period.

(i) (1) At any time after completion of drug treatment and the terms of probation, the court shall conduct a hearing, and if the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, including refraining from the use of drugs after the completion of treatment, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment, complaint, or information against the defendant, and the court shall order the case records and files to remain sealed, including any record of arrest, detention, and conviction. In addition, except as provided in paragraphs (2) and (3), both the arrest and the conviction shall be deemed never to have occurred. The defendant may additionally petition the court for a dismissal of charges at any time after completion of the prescribed course of drug treatment. Except as provided in paragraph (2) or (3), the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

(2) Dismissal of an indictment, complaint, or information pursuant to paragraph (1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

(3) Except as provided below, after an indictment, complaint, or information is dismissed pursuant to paragraph (1), the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or convicted for the offense. Except as provided below, a record pertaining to an arrest or conviction resulting in successful completion of a drug treatment program under this section may not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

Regardless of his or her successful completion of drug treatment, the arrest and conviction on which the probation was based may be recorded by the Department of Justice and disclosed in response to any peace officer application request or any law enforcement inquiry. Dismissal of an information, complaint, or indictment under this section does not relieve a defendant of the obligation to disclose the arrest and conviction in response to any direct

question contained in any questionnaire or application for public office, for a position as a peace officer as defined in Section 830, for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury.

(f) (j) (1) If probation is revoked pursuant to the provisions of this subdivision, the court may sentence the defendant to Track III probation and treatment or the court shall sentence the defendant to incarceration in the county jail for not more than one year. If the defendant has committed a new offense that is a misdemeanor not related to the use of drugs or a felony that is not a nonviolent drug possession offense, sentencing is not controlled by this paragraph. The defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section. The court may modify or revoke probation if the alleged violation is proved.

(2) If a defendant receives probation under subdivision (a), and violates that probation either by committing an offense that is not a nonviolent drug possession offense, or by violating a non-drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court may modify or revoke probation, and may impose graduated sanctions and/or jail sanctions prior to reinstatement of probation and treatment, if the alleged violation is proved, provided, however, that no jail sanction shall be imposed on a defendant who is receiving medication-assisted treatment if that treatment is not available to the defendant in jail. may remand the defendant for a period not exceeding 30 days during which time the court may receive input from treatment, probation, the state, and the defendant, and the court may conduct further hearings as it deems appropriate to determine whether or not probation should be reinstated under this section. If the court reinstates the defendant on probation, the court may modify the treatment plan and any other terms of probation, and continue the defendant in a treatment program under the Substance Abuse and Crime Prevention Act of 2000. If the court reinstates the defendant on probation, the court may, after receiving input from the treatment provider and probation, if available, intensify or alter the treatment plan under subdivision (a), and impose sanctions, including jail sanctions not exceeding 30 days, a tool to enhance treatment compliance:

(3) (A) If a defendant receives probation under After drug treatment commences pursuant to subdivision (a), and if there is probable cause to believe that the defendant has violated violates that probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in subdivision (d) of Section 1210; or by violating a drug-related condition of probation, and the state moves to revoke probation; the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation only if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. The court shall not revoke probation under this section for a drug-related violation of probation which occurred while the defendant was on a waiting list for a treatment program, was placed in an interim treatment program, or was otherwise waiting to begin appropriate drug treatment. If the court does not revoke probation, it may intensify or alter the drug treatment plan and in addition, impose a graduated sanction. if the violation does not involve the recent use of drugs as a circumstance of the violation, including, but not limited to, violations relating to failure to appear at treatment or court, noncompliance with treatment, and failure to report for drug testing, the court may impose sanctions including jail sanctions that may not exceed 48 hours of continuous custody as a tool to enhance treatment compliance and impose other changes in the terms and conditions of probation. The court shall consider, among other factors, the seriousness of the violation; previous treatment compliance; employment, education, vocational training; medical conditions; medical treatment, including narcotics replacement treatment; and including the opinion of the defendant's licensed and treating physician if immediately available and presented at the hearing, child support obligations, and family responsibilities. The court shall consider additional conditions of probation, which may include, but are not limited to, community service and supervised work programs. If one of the circumstances of the violation involves recent drug use, as well as other circumstances of violation, and the circumstance of recent drug use is demonstrated to the court by satisfactory evidence and a finding made on the record, the court may, after receiving input from treatment and probation, if available, direct the defendant to enter a licensed detoxification or residential treatment facility, and if there is no bed immediately available in such a facility, the court may order that the defendant be confined in a county jail for detoxification purposes only, if the



jail offers detoxification services, for a period not to exceed 10 days. The detoxification services must provide narcotic replacement therapy for those defendants presently actually receiving narcotic replacement therapy.

(B) If a defendant receives probation under subdivision (a), and for the second or third time there is probable cause to believe that the defendant has violated ~~violates~~ that probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation ~~only~~ if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or is unamenable to drug treatment. In determining whether a defendant is unamenable to drug treatment, the court may consider, to the extent relevant, whether the defendant (i) has committed a serious violation of rules at the drug treatment program, (ii) has repeatedly committed violations of program rules that inhibit the defendant's ability to function in the program, or (iii) has continually refused to participate in the program or asked to be removed from the program. If the court does not revoke probation, it may intensify or alter the drug treatment plan and impose a graduated sanction; and may, in addition, if the violation does not involve the recent use of drugs as a circumstance of the violation, including, but not limited to, violations relating to failure to appear at treatment or court, noncompliance with treatment, and failure to report for drug testing, impose sanctions including jail sanctions that may not exceed 120 hours of continuous custody as a tool to enhance treatment compliance and impose other changes in the terms and conditions of probation. The court shall consider, among other factors, the seriousness of the violation, previous treatment compliance, employment, education, vocational training, medical conditions, medical treatment, including narcotics replacement treatment, and including the opinion of the defendant's licensed and treating physician if immediately available and presented at the hearing, child support obligations, and family responsibilities. The court shall consider additional conditions of probation, which may include, but are not limited to, community service and supervised work programs. If one of the circumstances of the violation involves recent drug use, as well as other circumstances of violation, and the circumstance of recent drug use is demonstrated to the court by satisfactory evidence and a finding made on the record, the court may, after receiving input from treatment and probation, if available, direct the defendant to enter a licensed detoxification or residential treatment facility, and if there is no bed immediately available in such a facility, the court may order that the defendant be confined in a county jail for detoxification purposes only, if the jail offers detoxification services, for a period not to exceed 10 days. Detoxification services must provide narcotic replacement therapy for those defendants presently actually receiving narcotic replacement therapy.

(C) If a defendant receives probation under subdivision (a), and for the third or subsequent time violates on a subsequent occasion there is probable cause to believe that the defendant has violated that probation either by committing a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third or subsequent time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a) unless the court finds, in its discretion, after taking into consideration the opinions and recommendations of the drug treatment provider and the district attorney, that the defendant:

- (1) Is not a danger to the community, and
- (2) Is not unamenable to treatment.

If the court does not revoke probation, it may intensify or alter the drug treatment plan, impose a graduated sanction, and/or impose a jail sanction not to exceed 48 hours upon the first such imposition during the current course of treatment, five days upon the second such imposition during the current course of treatment, and 10 days for any subsequent imposition, provided, however, that no jail sanction shall be imposed on a defendant who is receiving medication-assisted treatment if that treatment is not available to the defendant in jail, unless the court determines that the defendant is not a danger to the community and would benefit from further treatment under subdivision (a). The court may then either intensify or alter the treatment plan under subdivision (a) or transfer the defendant to a highly structured drug court. If the court continues the defendant in treatment under subdivision (a), or drug court, the

court may impose appropriate sanctions including jail sanctions as the court deems appropriate.

(D) If a defendant who is on probation and enrolled in a drug treatment program pursuant to the former provisions of Section 1210.1 at the effective date of this act shall be subject to the revised provisions of the section for any future probation violation or for any new offense. Where such a probationer has committed one or more drug-related violations of probation prior to the effective date of the revisions, the count of the number of probation violations shall not be reset, but shall count forward from the number of violations prior to July 1, 2009, for purposes of establishing the court's response to such violations. ~~for a nonviolent drug possession offense violates that probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may modify or alter the treatment plan, and in addition, if the violation does not involve the recent use of drugs as a circumstance of the violation, including, but not limited to, violations relating to failure to appear at treatment or court, noncompliance with treatment, and failure to report for drug testing, the court may impose sanctions including jail sanctions that may not exceed 48 hours of continuous custody as a tool to enhance treatment compliance and impose other changes in the terms and conditions of probation. The court shall consider, among other factors, the seriousness of the violation, previous treatment compliance, employment, education, vocational training, medical conditions, medical treatment, including narcotics replacement treatment, and including the opinion of the defendant's licensed and treating physician if immediately available and presented at the hearing, child support obligations, and family responsibilities. The court shall consider additional conditions of probation, which may include, but are not limited to, community service and supervised work programs. If one of the circumstances of the violation involves recent drug use, as well as other circumstances of violation, and the circumstance of recent drug use is demonstrated to the court by satisfactory evidence and a finding made on the record, the court may, after receiving input from treatment and probation, if available, direct the defendant to enter a licensed detoxification or residential treatment facility, and if there is no bed immediately available in such a facility, the court may order that the defendant be confined in a county jail for detoxification purposes only, if the jail offers detoxification services, for a period not to exceed 10 days. The detoxification services must provide narcotic replacement therapy for those defendants presently actually receiving narcotic replacement therapy.~~

(E) If a defendant on probation at the effective date of this act for a nonviolent drug possession offense violates that probation a second time either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or that the defendant is unamenable to drug treatment. If the court does not revoke probation, it may modify or alter the treatment plan, and in addition, if the violation does not involve the recent use of drugs as a circumstance of the violation, including, but not limited to, violations relating to failure to appear at treatment or court, noncompliance with treatment, and failure to report for drug testing, the court may impose sanctions including jail sanctions that may not exceed 120 hours of continuous custody as a tool to enhance treatment compliance and impose other changes in the terms and conditions of probation. The court shall consider, among other factors, the seriousness of the violation, previous treatment compliance, employment, education, vocational training, medical conditions, medical treatment including narcotics replacement treatment, and including the opinion of the defendant's licensed and treating physician if immediately available and presented at the hearing, child support obligations, and family responsibilities. The court shall consider additional conditions of probation, which may include, but are not limited to, community service and supervised work programs. If one of the circumstances of the

violation involves recent drug use, as well as other circumstances of violation, and the circumstance of recent drug use is demonstrated to the court by satisfactory evidence and a finding made on the record, the court may, after receiving input from treatment and probation, if available, direct the defendant to enter a licensed detoxification or residential treatment facility, and if there is no bed immediately available in such a facility, the court may order that the defendant be confined in a county jail for detoxification purposes only, if the jail offers detoxification services, for a period not to exceed 10 days. The detoxification services must provide narcotic replacement therapy for those defendants presently actually receiving narcotic replacement therapy.

(F) If a defendant on probation at the effective date of this act for a nonviolent drug offense violates that probation a third or subsequent time either by committing a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third or subsequent time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a); unless the court determines that the defendant is not a danger to the community and would benefit from further treatment under subdivision (a). The court may then either intensify or alter the treatment plan under subdivision (a) or transfer the defendant to a highly structured drug court. If the court continues the defendant in treatment under subdivision (a), or drug court, the court may impose appropriate sanctions including jail sanctions.

(g) The term "drug-related condition of probation" shall include a probationer's specific drug treatment regimen, employment, vocational training, educational programs, psychological counseling, and family counseling.

SEC. 18. Section 1210.2 is added to the Penal Code, to read:

1210.2. *Track III. Treatment Diversion After a Conviction for Possession Of Controlled Substances; Other Nonviolent Offenses; Judicial Discretion.*

(a) Notwithstanding any other provision of law, an offender is eligible to be placed into Track III treatment diversion programs if the defendant has:

- (1) Participated unsuccessfully in Track II treatment diversion;
- (2) Committed a nonviolent drug possession offense or offenses, but is not eligible for Track II treatment diversion; or
- (3) Committed a nonviolent offense or offenses, and the defendant appears to have a problem with substance abuse or addiction.

(b) The court must find that placement of the defendant in Track III treatment diversion pursuant to subdivision (a) is in the furtherance of justice. In the case of a defendant who has committed a nonviolent offense that is not a nonviolent drug possession offense, the court may require the defendant to provide restitution, participate in a restorative justice program, and/or complete a portion of a sentence for the offense prior to placement in Track III treatment diversion, with the remainder of the sentence suspended during participation.

(c) Notwithstanding any other provision of law, an offender shall be placed into Track III treatment diversion programs if the defendant is otherwise eligible for Track II treatment diversion but for the fact that, in the 30 months prior to the current conviction, the defendant has five or more convictions for any offense or combination of offenses, including nonviolent drug possession offenses and not including infractions.

(d) A defendant is not eligible for Track III treatment diversion under this section if the defendant:

(1) Has ever committed a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, unless the district attorney seeks to place the defendant in Track III treatment diversion;

(2) Is eligible for Track I or Track II treatment diversion and has not been afforded any opportunity to participate in such programs; or

(3) Refuses placement in treatment diversion under this section.

(e) A defendant placed into Track III treatment diversion shall be granted probation. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court shall order the defendant to appear for a clinical assessment and criminal history evaluation, and shall thereafter order the defendant to attend and complete an appropriate treatment program. If the defendant had a clinical assessment performed prior to a determination of eligibility, the court may order a new assessment. The court shall thereafter place the defendant in treatment and set monitoring conditions consistent with the terms and requirements of Section 1210.02.

(f) If a defendant receives probation under this section, and has not yet begun treatment within 30 days of the grant of probation, the court shall

conduct a hearing to determine the reason for the defendant's failure to begin treatment. The court shall consider evidence from the parties, probation department, and treatment provider. At the hearing, the defendant may refuse treatment.

If the defendant does not refuse treatment, the court may re-refer the defendant to the treatment program and may impose graduated sanctions and/or jail sanctions, or may revoke probation for the defendant's failure to start treatment, provided, however, that sanctions shall not be imposed or probation revoked when the defendant's failure to begin treatment resulted from a county's inability to provide appropriate treatment in a timely manner or from the county's failure to make treatment reasonably accessible, such as the failure to offer child care for a parenting defendant or failure to provide transportation if needed.

The court shall collect and report all data relevant to a defendant's failure to begin treatment within 30 days, the reasons therefor, and the court's responses, in any form required by the Oversight Commission. Such data regarding treatment show rates shall be published by the department, or researchers designated by the Oversight Commission, on county-by-county and statewide bases, not less than once per year.

(g) Drug treatment services provided by subdivision (e) as a required condition of probation may not exceed 18 months, unless the court makes a finding that the continuation of treatment services beyond 18 months is necessary for drug treatment to be successful. If such a finding is made, the court may order up to two three-month extensions of treatment services. The provision of treatment services under this section shall not exceed 24 months.

(h) To the greatest extent possible, any person who is placed on probation pursuant to this section shall be monitored by the court through the use of a dedicated court calendar and the incorporation of a collaborative court model of oversight that includes close collaboration with treatment providers and probation, urinalysis consistent with treatment needs, and supervision of progress through review hearings.

(i) During periodic review hearings to evaluate a defendant's progress, the court shall consider the use of incentives and rewards to encourage continued progress, and may impose graduated sanctions or jail sanctions in response to problems reported by the treatment provider or probation department, or in the court's discretion, with or without a finding that a violation of probation has occurred. A jail sanction shall not exceed 48 hours upon the first such imposition during the current course of treatment, five days upon the second such imposition during the current course of treatment, and 10 days for any subsequent imposition, provided, however, that no jail sanction shall be imposed on a defendant who is receiving medication-assisted treatment if that treatment is not available to the defendant in jail.

(j) Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in its authority to process and respond to probation violations. The court may terminate treatment and probation at any time in response to the defendant's behavior. If probation is terminated, the defendant may be sentenced without regard to any provision of this section.

(k) Upon successful completion of treatment as required under this section, the court may require continued probation. At any time after completion of drug treatment and the terms of probation, the court shall conduct a hearing to determine the appropriate final disposition of the case, which may include dismissal of the conviction, indictment, complaint and information against the defendant, and the sealing of case records and files, including any record of arrest, detention and conviction. The defendant may, additionally, petition the court for a dismissal of charges at any time after completion of treatment. Any time a dismissal is ordered, the court shall set appropriate limitations for the defendant regarding the dismissed charges.

SEC. 19. Section 2933 of the Penal Code is amended to read:

2933. (a) It is the intent of the Legislature that persons convicted of a crime and sentenced to the state prison under Section 1170 serve the entire sentence imposed by the court, except for a reduction in the time served in the custody of the ~~Director of Corrections~~ Department of Corrections and Rehabilitation for performance in work, training, or education programs established by the Department of Corrections and Rehabilitation ~~Director of Corrections~~. Worktime credits shall apply for performance in work assignments and performance in elementary, high school, or vocational education programs. Enrollment in a two- or four-year college program leading to a degree shall result in the application of time credits equal to that provided in Section 2931. For every six months of full-time performance in a credit qualifying program, as designated by the department, ~~director~~, a prisoner shall be awarded worktime credit reductions from his or her term of confinement of six months. A lesser amount of credit based on this ratio shall be awarded for any lesser

period of continuous performance. Less than maximum credit should be awarded pursuant to regulations adopted by the ~~director~~ *department* for prisoners not assigned to a full-time credit qualifying program. Every prisoner who refuses to accept a full-time credit qualifying assignment or who is denied the opportunity to earn worktime credits pursuant to subdivision (a) of Section 2932 shall be awarded no worktime credit reduction. Every prisoner who voluntarily accepts a half-time credit qualifying assignment in lieu of a full-time assignment shall be awarded worktime credit reductions from his or her term of confinement of three months for each six-month period of continued performance. Except as provided in subdivision (a) of Section 2932, every prisoner willing to participate in a full-time credit qualifying assignment but who is either not assigned to a full-time assignment or is assigned to a program for less than full time, shall receive no less credit than is provided under Section 2931. Under no circumstances shall any prisoner receive more than six months' credit reduction for any six-month period under this *subdivision* ~~section~~.

(b) *It is the intent of the people that persons convicted of a crime defined in paragraph (1) of subdivision (b) of Section 3000 and sentenced to the state prison under Section 1170 serve the entire sentence imposed by the court, except for a reduction in the time served in the custody of the Department of Corrections and Rehabilitation for good behavior and performance in rehabilitation programs approved by the department. Credits shall apply for good behavior and performance in rehabilitation programs. For every two months of good behavior, a prisoner shall be awarded a good time credit reduction to his or her term of confinement of no less than one month. For every two months of performance in a credit qualifying rehabilitation program, as designated by the Secretary of Rehabilitation, a prisoner shall be awarded a program time reduction to his or her term of confinement of no less than one month. As to both good time and program time reductions, a lesser amount of credit based on this ratio shall be awarded for any lesser period of good behavior or performance. The Department of Corrections and Rehabilitation may award more than the minimum credit amounts provided for in this section pursuant to regulations approved by the Parole Reform Oversight and Accountability Board. Credits awarded pursuant to this subdivision shall not be used to reduce the term for any inmate who has ever been convicted of a serious or violent felony within the meaning of Section 667.5 or 1192.7, or who has ever been convicted of a Section 290 registration offense. Inmates may earn the credits provided in this subdivision whether serving time for their original commitment offense or serving time after having been returned to state prison from parole.*

(c) *Nothing in this section shall be interpreted to limit the awarding of credits to any inmates pursuant to any law or regulation existing prior to the effective date of this act.*

(d) *Inmates who qualify for credits under subdivisions (a) and (b) may earn credit under both subdivisions, provided, however, that the combined total of all credits shall not exceed one-half of the term of imprisonment imposed by the court, unless the inmate successfully completes a rehabilitation program as defined in paragraph (3) of subdivision (b) of Section 3000. The maximum amount of credit for inmates who successfully complete rehabilitation programs shall be designated in regulations approved by the Parole Reform Oversight and Accountability Board.*

(b) (e) *Worktime credit Earning credits is a privilege, not a right. Worktime credit Credits must be earned and may be forfeited pursuant to the provisions of Section 2932. The application of credit to reduce the sentence of a prisoner who committed a crime on or after January 1, 1997, is subject to the provisions of Section 3067. Except as provided in subdivision (a) of Section 2932, every prisoner shall have a reasonable opportunity to participate in a full-time credit qualifying program or service or assignment in a manner consistent with institutional security and available resources.*

(e) (f) *Under regulations adopted by the Department of Corrections and Rehabilitation, which shall require a period of not more than one year free of disciplinary infractions, worktime credit which has been previously forfeited may be restored by the department director. The regulations shall provide for separate classifications of serious disciplinary infractions as they relate to restoration of credits, the time period required before forfeited credits or a portion thereof may be restored, and the percentage of forfeited credits that may be restored for these time periods. For credits forfeited for commission of a felony specified in paragraph (1) of subdivision (a) of Section 2932, the Department of Corrections and Rehabilitation may provide that up to 180 days of lost credit shall not be restored and up to 90 days of credit shall not be restored for a forfeiture resulting from conspiracy or attempts to commit one of those acts. No credits may be restored if they were forfeited for a serious*

*disciplinary infraction in which the victim died or was permanently disabled. Upon application of the prisoner and following completion of the required time period free of disciplinary offenses, forfeited credits eligible for restoration under the regulations for disciplinary offenses other than serious disciplinary infractions punishable by a credit loss of more than 90 days shall be restored unless, at a hearing, it is found that the prisoner refused to accept or failed to perform in a credit qualifying assignment, or extraordinary circumstances are present that require that credits not be restored. "Extraordinary circumstances" shall be defined in the regulations adopted by the director. However, in any case in which worktime credit was forfeited for a serious disciplinary infraction punishable by a credit loss of more than 90 days, restoration of credit shall be at the discretion of the director.*

*The prisoner may appeal the finding through the Department of Corrections and Rehabilitation review procedure, which shall include a review by an individual independent of the institution who has supervisory authority over the institution.*

(d) (g) *The provisions of subdivision (e) (f) shall also apply in cases of credit forfeited under Section 2931 for offenses and serious disciplinary infractions occurring on or after January 1, 1983.*

SEC. 20. Section 3000 of the Penal Code is amended to read:

3000. (a) (1) *The Legislature people finds find and declares declare that the period periods immediately following before and after the end of incarceration is are critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to prepare inmates who are leaving prison for reintegration into society, to provide for appropriate the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide appropriate educational, vocational, family and personal counseling, and restorative justice programming necessary to assist inmates and parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.*

(2) *The Legislature people finds find and declares declare that it is not the intent of this section to diminish resources allocated to the Department of Corrections and Rehabilitation for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Parole Hearings to execute its duties with respect to parole functions for which the board is responsible.*

(3) *The Legislature people finds find and declares declare that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders and participation in restorative justice programs, where appropriate, and that equally diligent efforts must be made to prevent such criminal behavior by provision of appropriate services, programs, and counseling before parolees leave prison and after they are released, with the goal of successful reintegration of the parolee into society.*

(4) *The parole period of any person found to be a sexually violent predator shall be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole, or any remaining portion thereof, shall begin to run.*

(b) *For purposes of this section, and subdivision (b) of Section 2933, the following definitions apply:*

(1) *The term "qualifying commitment offense" means that the current offense from which the inmate is being paroled is a controlled substance offense, a nonviolent property offense, or any other offense added by the Legislature by majority vote. A "controlled substance offense" is any offense involving possession or use of any controlled substance defined in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, or the sale or distribution of any such substance in an amount less than one kilogram, provided that the conviction did not involve a finding of sale or distribution to a minor. A "nonviolent property offense" is a crime against property in which no one is physically injured and which did not involve either the use or attempted use of force or violence or the express or implied threat to use force or violence. The Parole Reform Oversight and Accountability Board shall create an advisory list of qualifying commitment offenses which meet the criteria identified in this subdivision.*

(2) *The term "Section 290 registration offense" means an offense for which registration is required pursuant to Section 290.*

(3) *The term "rehabilitation programs" refers to training and counseling programs paid for by the Department of Corrections and Rehabilitation designed to assist prison inmates and parolees in a successful reintegration into the community upon release. Such programs and services include, but are*



not limited to, drug treatment programs, mental health services, alcohol abuse treatment, re-entry services, cognitive skills development, housing assistance, education, literacy training, life skills, job skills, vocational training, victim impact awareness, restorative justice programs, anger management, family and relationship counseling, and provision of information involving publicly funded health, social security, and other benefits. Rehabilitation programs may include services provided in prison or after release from prison. When rehabilitation services are provided after release from prison, transportation to and from the services shall be provided by the department.

(4) The term "drug treatment program" or "drug treatment" means a drug treatment program which may include one or more of the following: science-based drug education, outpatient services, residential services, opioid agonist treatment, medication-assisted treatment, and aftercare services or continuing care. The term "drug treatment program" or "drug treatment" includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001; such a program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision.

(5) The term "minimum supervision" means a level of parole under which the requirements of the parolee are to report to his or her parole officer no more than once every 90 days and to be subject to search.

(b) (c) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) ~~At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.~~

(1) As to all inmates sentenced to state prison under Section 1170 and scheduled to be released, including inmates returned to state prison for a parole violation, the department shall provide rehabilitation programs beginning no fewer than 90 days prior to their scheduled release. Prior to providing an inmate with rehabilitation programs, the department shall conduct a case assessment to determine the inmate's needs and which programs are most likely to result in the successful reintegration of the inmate upon release. If a parolee is returned to state prison for less than 90 days, the department shall nevertheless provide rehabilitation programs.

(2) As to all inmates released from state prison and on parole, the department shall provide rehabilitation programs tailored to the parolee's needs as defined by the case assessment.

(3) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, and unless the parole authority for good cause waives parole and discharges the inmate from the custody of the department, an inmate shall be released from custody on parole supervision for a period not exceeding six months if all the following conditions have been satisfied:

(A) The offense from which the inmate is being paroled is a qualifying commitment offense;

(B) The inmate has never been convicted, or suffered a juvenile adjudication, of either a serious or violent felony within the meaning of Section 667.5 or 1192.7, or a Section 290 registration offense; and

(C) The inmate has never been convicted, or suffered a juvenile adjudication, of participating in a criminal street gang in violation of subdivision (a) of Section 186.22, or convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang in violation of subdivision (b) of Section 186.22.

The six-month supervision period may be extended only to account for time that the parolee is incarcerated due to parole violations or for time in which the parolee is absent from supervision. At the end of the supervision period, the parolee shall be discharged from further parole supervision. The parole authority may, however, assign a parolee to minimum supervision for a period not exceeding six months where the parolee has failed to complete an appropriate rehabilitation program which was offered. As to parolees retained on minimum supervision, final discharge from parole shall occur at the expiration of this six-month period or upon completion of an appropriate rehabilitation program, whichever is earlier.

Except as provided in paragraphs (4), (5) and (6), all other inmates shall be released on parole for a period not exceeding three years, unless the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(4) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, any inmate sentenced for an offense which is either a serious or violent felony as defined in Section 667.5 or 1192.7 shall be released on parole for a period of up to five years, unless the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(5) (2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(6) (3) Notwithstanding paragraphs (1) and (2), (3), (4), and (5), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be 10 years.

(7) (4) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(8) (5) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), or (3) (3), (4), (5), or (6) as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), (2), and (3) (3), (4), (5), and (6) shall be computed from the date of initial parole and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, the period of parole is subject to the following:

(A) Except as provided in Section 3064, in no case may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole.

(B) Except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole.

(C) Except as provided in Section 3064, in no case may a prisoner subject to 10 years on parole be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole.

(9) (6) The Department of Corrections and Rehabilitation shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections and Rehabilitation or the Board of Parole Hearings may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(10) (7) For purposes of this chapter, the Board of Parole Hearings shall be considered the parole authority.

(11) (8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Parole Hearings, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(12) (9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on parole to engage them in treatment.

(d) As to all inmates released from state prison and discharged from parole, the department shall provide rehabilitation programs upon request of the former inmate made within one year of discharge from parole. The services shall be provided through the inmate's county probation department and shall last no more than 12 months from the date they are first provided. All operational costs of such services shall be reimbursed by the department.

SEC. 21. Section 3063.01 is added to the Penal Code, to read:

3063.01. (a) A parolee who commits a nonviolent drug possession offense as defined in subdivision (a) of Section 1210, or who tests positive for or is under the influence of controlled substances, and is eligible for drug treatment services pursuant to Section 3063.1, shall receive such services at the expense of the department regardless of whether the services and supervision are provided by the county or the parole authority. The response to any further violations shall be governed by Section 3063.1 for as long as the parolee remains eligible for continued treatment under that section. Parolees who are no longer eligible for drug treatment pursuant to the terms of subparagraph (A) or (B) of paragraph (3) of subdivision (d) of Section 3063.1, and who violate the terms of their parole, shall be governed by subdivisions (c), (d) and (e) of this section.

(b) A parolee who accepts an assignment or referral to a program described in Section 3060.9, 3069, or 3069.5 shall, in writing, voluntarily and specifically waive application of the rights he or she might otherwise have pursuant to this section or Section 3063.1.

(c) Except for parolees covered by Section 3060.7, and parolees who have ever been convicted of a serious or violent felony pursuant to subdivision (c) of Section 667.5, or subdivision (c) of Section 1192.7, parole shall not be suspended or revoked, and a prisoner returned to custody in state prison for a technical violation of parole. For purposes of this section, the term "technical violation of parole" refers to conduct which although it may violate a parole condition does not constitute either a misdemeanor or felony in and of itself. Where a technical violation of absconding from parole supervision has been found, the parolee may be incarcerated in a local jail for up to 30 days or non-incarceration options and sanctions may be imposed, including modification of the conditions of parole, performing a case assessment to determine needs, and provision of local rehabilitation programs as defined in paragraph (3) of subdivision (b) of Section 3000. Where any other technical violation has been found, non-incarceration options and sanctions may be imposed. Upon the second technical violation other than absconding, the revised conditions of parole may include non-incarceration sanctions and options and/or incarceration in a local jail for up to seven days. For subsequent technical violations other than absconding, the revised conditions of parole may include non-incarceration options and sanctions as well as incarceration in a local jail for up to 14 days. The operational costs of such local custody, and of any assessments or rehabilitation programs, shall be reimbursed by the department. Nothing in this section is intended to overrule the provisions of Section 3063.1.

(d) Except for parolees covered by Section 3060.7, and parolees who have ever been convicted of a serious or violent felony pursuant to subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, parole shall not be suspended or revoked, and a prisoner returned to custody in state prison, for a misdemeanor violation of parole. For purposes of this section, the term misdemeanor violation of parole refers to conduct which although it may violate a parole condition does not necessarily constitute a felony in and of itself. Where a misdemeanor violation has been found, non-incarceration options and sanctions may be imposed, including modification of the conditions of parole, performing a case assessment to determine needs, and provision of local rehabilitation programs as defined in paragraph (3) of subdivision (b) of Section 3000. Alternatively, where a misdemeanor violation has been found, parole may be revoked and the parolee may be returned to custody in a local jail for up to six months. The operational costs of such local custody, and of any assessments or rehabilitation programs, shall be reimbursed by the department. Nothing in this section is intended to overrule the provisions of Section 3063.1.

(e) Notwithstanding any other provision of law, parole may be suspended or revoked, and any prisoner may be returned to custody in state prison, for a felony violation of parole. For purposes of this section, the term "felony violation of parole" refers to conduct which constitutes a felony in and of itself. Where a felony violation has been found, non-incarceration options and sanctions may be imposed, including modification of the conditions of parole, performing a case assessment to determine needs, and provision of local rehabilitation programs as defined in paragraph (3) of subdivision (b) of Section 3000. Alternatively, where a felony violation has been found, parole may be revoked and the prisoner may be returned to custody in a local jail or state prison. The operational costs of such local custody, and of any assessments or rehabilitation programs, shall be reimbursed by the department. Nothing in this section is intended to overrule the provisions of Section 3063.1.

(f) In addition to any other procedures and rights provided by law, a parolee alleged to have committed a violation of parole shall receive notice of the alleged violation at a hearing held before a deputy commissioner of the Board

of Parole Hearings within three business days of being taken into custody. The parolee shall have the right to counsel at this hearing.

(g) The parole authority shall collect and report data regarding all alleged parole violations, regardless of whether they are sustained or result in either modification or revocation of parole. The data shall be collected in the form recommended by the Parole Reform Oversight and Accountability Board and shall include information about the nature of the violation and the demographics of the alleged violator. The department shall publish this data electronically at least twice yearly on its Web site.

SEC. 22. Section 3063.02 is added to the Penal Code, to read:

3063.02. From the funds appropriated to the Department of Corrections and Rehabilitation in the annual Budget Act or other statute appropriating funds to the department, and subject to the limitations contained therein, the department shall allocate funds for five years, beginning July 1, 2009, for a pilot project in at least five regions spanning urban and rural areas to implement the programs described in Sections 3060.9, 3069, and 3069.5.

SEC. 23. Section 3063.03 is added to the Penal Code, to read:

3063.03. (a) There is hereby created the Parole Reform Oversight and Accountability Board which shall review, direct, and approve the implementation, by the Department of Corrections and Rehabilitation, of the programs and policies provided for under this act. Regulations of general applicability promulgated by the department that pertain to parole policies and rehabilitation programs for inmates and parolees shall not take effect without approval by a majority vote of the board. Regulations subject to board approval shall not be subject to the Administrative Procedures Act or to review and approval by the Office of Administrative Law. The board shall have no role in determining release dates or the specific response to any alleged parole violation for any specific inmate or parolee. The board shall do the following:

(1) Review and approve by a majority vote all regulations governing parole policy and rehabilitation programs;

(2) Review all proposed funding allocations for rehabilitation programs, and actual spending in prior years, and publish its comments on those allocations and spending;

(3) Review and approve, by majority vote, regulations specifying any amount of credit to be awarded for good behavior and program participation beyond the minimum amounts specified in subdivision (b) of Section 2933, based on such factors as progress benchmarks, including program completion. The regulations shall address whether parolees returned to state prison should be treated the same as other inmates with respect to credits;

(4) Create and approve, by a majority vote, an advisory list of qualifying commitment offenses to be employed in applying subdivision (b) of Section 2933, and paragraph (1) of subdivision (b), and paragraph (3) of subdivision (c), of Section 3000;

(5) Require the department to provide specific data on the parole system, and examine that data to assess current laws regulating all aspects of the parole system;

(6) Require the department to provide specific data on rehabilitation programs to be collected by the Division of Research for Recovery and Re-Entry Matters, and examine that data to assess current rehabilitation programs and policies;

(7) Determine and approve, by a majority vote, the appropriate form of data collection for purposes of subdivision (e) of Section 3063.01 regarding parole violations;

(8) Order research on parole policy and practices, inside and outside California, to be paid for, upon a majority vote of the board, from the funds appropriated to the department in the annual Budget Act, and subject to the limitations contained therein. Such research shall be conducted by a public university in California;

(9) Monitor the development and implementation, by the department, of a system of incentives and rewards to encourage compliance with the terms of parole by all former inmates under parole supervision;

(10) Provide a balanced forum for statewide policy development, information development, research, and planning concerning the parole process;

(11) Assemble and draw upon sources of knowledge, experience and community values from all sectors of the criminal justice system, from the public at large and from other jurisdictions;

(12) Study the experiences of other jurisdictions in connection with parole;

(13) Make recommendations to the Secretary of Rehabilitation and Parole and the Legislature in a report published at least once every two years;

(14) Ensure that all these efforts take place on a permanent and ongoing basis, with the expectation that the parole system and rehabilitation programs

provided by the department shall strive continually to evaluate themselves, evolve, and improve;

(15) Develop and approve, in consultation with the department, the program and agenda, invitation list, and budget for an annual international conference on the subject of prisoner and parolee rehabilitation;

(16) Identify and promote innovative rehabilitation programs and best practices implemented in prisons and on parole, and publicly honor department employees who exemplify rehabilitation excellence;

(17) Determine the board's staffing needs sufficient to carry out the board's responsibilities;

(18) Conduct public meetings and invite and consider public comment. The board shall promulgate regulations that provide for public review and comment on all proposed regulations subject to board approval, provided, however, that the board need not respond to all comments before giving approval to regulations or taking other actions.

(b) The board shall be empanelled no later than March 31, 2009. It shall be composed of 19 voting members and two non-voting members. The two non-voting members shall be the Secretary of Rehabilitation and Parole or his or her designee and the Inspector General. Of the 19 voting members, two members shall be academic experts in parole policy, appointed by the Speaker of the Assembly. One member shall be a legal scholar with expertise in parole policy, appointed by the Senate Committee on Rules. One member shall be a county sheriff from a county with a population greater than 100,000, appointed by the Governor. One member shall be a former member of the judiciary, appointed by the Governor. One member shall be a person formerly incarcerated in state prison, appointed by the Speaker of the Assembly. One member shall be a sheriff from a county with a population less than 100,000, appointed by the Governor. One member shall be a California district attorney, appointed by the Governor. One member shall be a public defender, appointed by the Governor. One member shall be a private criminal defense lawyer with experience litigating parole cases on behalf of inmates, appointed by the Speaker of the Assembly. One member shall be a member of a crime victims group, appointed by the Governor. One member shall be a parole officer with a minimum of five years experience, appointed by the Governor. Three members shall be providers of drug treatment, rehabilitation or re-entry services as defined in paragraph (3) of subdivision (b) of Section 3000, with one appointed by the Speaker of the Assembly, one appointed by the Senate Committee on Rules, and one appointed by the Governor. One member shall be a provider of community-based services to parolees, appointed by the Senate Committee on Rules. One member shall be a member of an association of county governments, appointed by the Governor. Two members shall be representatives of the two largest bargaining units within the department, the representative of the largest bargaining unit appointed by the Speaker of the Assembly and the other representative appointed by the Governor.

(c) On January 1, 2012, the terms of the county sheriff from the smaller county, the former member of the judiciary, the parole officer, the district attorney, the county government representative, the representative of the largest bargaining unit within the department, and the private defense lawyer shall expire. On January 1, 2013, the terms of the crime victim representative, the public defender, the sheriff from the larger county, the representative of the second largest bargaining unit within the department, and the provider of community-based services shall expire. On January 1, 2014, the terms of the two academic experts, the legal scholar, the formerly incarcerated person, and the three reentry service providers shall expire. Successor members shall be appointed in the same manner, and hold office for terms of three years, each term to commence on the expiration date of the predecessor. Any appointment to a vacancy that occurs for any reason other than the expiration of the term shall be for the remainder of the unexpired term. Members are eligible for reappointment.

(d) Members of the board other than government employees shall receive a per diem to be determined by the Department of Corrections and Rehabilitation, but not less than the usual per diem rate allowed to department employees during travel out of state. All members shall be reimbursed by the department for all necessary expenses of travel actually incurred attending meetings of the board and in the performance of their duties. All expenses shall be paid by the department, and the department shall also provide staff for the board sufficient to support and facilitate its operations. Research ordered by the board shall be conducted by a public university in California and shall be paid for by the department from the funds appropriated to the department in the annual Budget Act, subject to the limitations contained therein. For purposes of compensation, attendance at meetings of the board by a state or local government employee shall be deemed performance of the duties of his or her

state or local government employment.

SEC. 24. Section 3063.2 of the Penal Code is amended to read:

3063.2. In a case where a parolee had been ordered to undergo drug treatment as a condition of parole pursuant to Section 3063.1, any drug testing of the parolee shall be used solely as a treatment tool to tailor the response of the treatment program and of the supervising authority to the parolee's relapse. In evaluating a parolee's treatment program, results of any drug testing shall be given no greater weight than any other aspects of the parolee's individual treatment program. Results of such testing shall not be admissible as a basis for any new criminal prosecution or proceeding, nor shall such results be cause, in and of themselves, to find that a violation of parole has occurred. The county or parole authority may consider a test result as positive for purposes of modifying a parolee's conditions of parole only if the laboratory performing such analysis utilized the following procedures and standards: validity testing, initial and confirmation testing, cutoff concentrations, dilution and adulteration criteria, and split specimen procedures.

SEC. 25. Section 5050 of the Penal Code is amended to read:

5050. References to Secretary of the Department of Corrections and Director of Corrections; creation of Secretary of Rehabilitation and Parole.

Commencing July 1, 2009, any reference to the Secretary of the Department of Corrections and Rehabilitation or the Director of Corrections refers to the Secretary of Rehabilitation and Parole or the Secretary of Corrections, as specified by statute or the subject matter of the provision. ~~Commencing July 1, 2005, any reference to the Director of Corrections in this or any other code refers to the Secretary of the Department of Corrections and Rehabilitation. As of that date, the office of the Director of Corrections is abolished.~~

SEC. 26. Section 6026.01 is added to the Penal Code, to read:

6026.01. The Corrections Standards Authority shall annually publish a report detailing the number of persons in institutions in each calendar year with a primary commitment offense that is a controlled substance offense. The report shall clearly delineate the numbers entering institutions during the most recent year due to new sentences from the courts and due to parole violations. For all persons entering institutions for simple possession of controlled substances, the report shall, to the greatest extent possible, provide detail regarding the prior records of such persons, the controlled substance involved, the reasons for referral to institutions, the range of sentence lengths, and the average sentence lengths imposed on such persons. The report shall include a statement or projection of the annual cost of incarcerating all of these persons for controlled substance offenses. The first such annual report shall be issued no later than July 1, 2010.

SEC. 27. Section 6026.02 is added to the Penal Code, to read:

6026.02. The Corrections Standards Authority shall annually publish a report regarding the parole population, parolee program participation, parole violations, and the responses to such violations. Each report shall cover a calendar year and shall detail the number of persons placed onto parole supervision and the levels of supervision; the number of parolees participating in rehabilitation programs and the specific types of programs in which those parolees were enrolled; the number of alleged parole violations and the number of parole violations found to have occurred; the response to parole violations including parole modifications, sanctions, program referrals and revocations; and the number of jail or prison days served by parole violators. Each report shall contain a section with data on treatment provided pursuant to Section 3063.1, and including data related to eligibility, participation, and completion. Each report shall provide information on the sex, race or ethnicity, and county of commitment of all parolees, to the extent such information is available, for each category of information required for the report. The first such annual report shall be issued no later than July 1, 2011.

SEC. 28. Section 6032 is added to the Penal Code, to read:

6032. The Department of Corrections and Rehabilitation shall annually host an international conference on the subject of prisoner and parolee rehabilitation with the purpose of examining California's rehabilitation programs and data and comparing California's efforts with the best practices and innovations of other jurisdictions. The conference shall include representatives from the corrections and rehabilitation departments of other states and other nations. The complete program and agenda, invitation list and budget shall be developed by the department in consultation with, and subject to the final approval of, the Parole Reform Oversight and Accountability Board. Conference expenses, consistent with a budget approved by the Parole Reform Oversight and Accountability Board, shall be paid for by the department from the funds appropriated to the department in the annual Budget Act, subject to the limitations contained therein. The first such conference shall occur no later than July 1, 2010.

SEC. 29. Section 6050.1 is added to the Penal Code, to read:

6050.1. (a) *The Governor, upon the recommendation of the Secretary of Rehabilitation and Parole, shall appoint a Chief Deputy Warden for Rehabilitation to serve at each of the state prisons, and, as appropriate, at additional department facilities such as re-entry centers, who shall be known as the Rehabilitation Warden. The Rehabilitation Warden shall be responsible for implementing and overseeing rehabilitation programs at each state prison and/or facility and providing data to the Secretary of Rehabilitation and Parole on the types of in-custody programs being offered, the demographics of prisoners attending the programs, and the effectiveness of, and barriers to, such programs at each prison and/or facility, and any additional data required by the Secretary of Rehabilitation and Parole and the Parole Reform Oversight and Accountability Board. This data is to be provided to the secretary through the Division of Research for Recovery and Re-Entry Matters no less than once a year. Each Rehabilitation Warden shall be subject to removal by the secretary. If the secretary removes him or her, the action shall be final.*

(b) *The Department of Personnel Administration shall fix the compensation of the Rehabilitation Wardens at a level equal to that of the other chief deputy wardens in the prison system.*

SEC. 30. Section 6126.01 is added to the Penal Code, to read:

6126.01. *The Inspector General shall annually publish a report detailing the prevalence and types of rehabilitation programs available at each California prison, and each facility managed by or contracted by the Department of Corrections and Rehabilitation. The report shall rank and rate the prisons and facilities in terms of program availability relative to need, utilization rates, and performance measures, examining both the degree of success by each prison or facility in implementing such programs and the degree of success by prisoner participants. The report shall use a letter-grade system, and shall make specific recommendations for improvement. A preliminary report shall be issued no later than October 1, 2009. All subsequent annual reports shall be issued by October 1 of each year.*

SEC. 31. Marijuana. Diversion for Persons Under Age 18. Fines.

SEC. 31.1. Section 11357 of the Health and Safety Code is amended to read:

11357. (a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, or shall be punished by imprisonment in the state prison.

(b) *Except as authorized by law, every person 18 years of age or older who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction and shall be punished by a fine of not more than one hundred dollars (\$100). Additional fees of any kind, including assessments, fees, and penalties, shall not exceed the amount of the fine imposed. Every person under 18 years of age who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction and shall be required to complete a science-based drug education program certified by the county alcohol and drug program administrator. Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). Notwithstanding other provisions of law, if such person has been previously convicted three or more times of an offense described in this subdivision during the two-year period immediately preceding the date of commission of the violation to be charged, the previous convictions shall also be charged in the accusatory pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, the provisions of Sections 1000.1 and 1000.2 of the Penal Code shall be applicable to him, and the court shall divert and refer him for education, treatment, or rehabilitation, without a court hearing or determination or the concurrence of the district attorney, to an appropriate community program which will accept him. If the person is so diverted and referred he shall not be subject to the fine specified in this subdivision. If no community program will accept him, the person shall be subject to the fine specified in this subdivision. In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.*

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail for a period of not more than six months or by

a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in the county jail for a period of not more than 10 days, or both.

(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be subject to the following dispositions:

(1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first offense has been committed; and required completion of a science-based drug education program certified by the county alcohol and drug program administrator.

(2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

(f) *The fines collected pursuant to this section shall be deposited into the county's trust fund designated for youth programs established pursuant to subdivision (b) of Section 11999.6.2.*

SEC. 32. Oversight of Drug Court Programs for Adult Felons in Track III Diversion.

SEC. 32.1. Section 11970.1 of the Health and Safety Code is amended to read:

11970.1. (a) This article shall be known and may be cited as the Comprehensive Drug Court Implementation Act of 1999.

(b) *The people intend that all adult felons who qualify for Track III treatment diversion programs after July 1, 2009, shall be enrolled in those programs, and that all drug courts working with defendants who qualify for Track III shall be controlled and governed by the Track III statute, Section 1210.2 of the Penal Code, and Sections 11999.5 to 11999.13, inclusive, of this code. To the greatest extent possible, defendants participating in drug courts before July 1, 2009, and who are eligible for Track III, shall be transferred to Track III programs.*

(b)(c) This article shall be administered by the State Department of Alcohol and Drug Programs, with all regulations related to programs for adult felons enrolled in Track III treatment diversion programs being subject to review and approval by the Oversight Commission, as described in Section 11999.5.2.

(e)(d) The department and the Judicial Council shall design and implement this article through the Drug Court Partnership Executive Steering Committee established under the Drug Court Partnership Act of 1998 pursuant to Section 11970, for the purpose of funding cost-effective local drug court systems for adults, juveniles, and parents of children who are detained by, or are dependents of, the juvenile court.

SEC. 33. Evaluation of Drug Court Programs for Adult Felons.

SEC. 33.1. Section 11970.2.1 is added to the Health and Safety Code, to read:

11970.2.1. *Notwithstanding subdivision (d) of Section 11970.2, evaluation of all programs for adult felons provided pursuant to Sections 11970.1 to 11970.35, inclusive, shall be integrated with the program evaluations required pursuant to Section 11999.10. The State Department of Alcohol and Drug Programs shall not publish additional reports regarding adult felons using any design established prior to October 31, 2007; however, all data and information collected by the department related to drug court programs for adult felons shall be public information, subject to redaction only as required by federal law or the California Constitution. The department, in collaboration with the Judicial Council, may create an evaluation design for the Comprehensive Drug Court Implementation Act of 1999 to separately assess the effectiveness of programs for persons who are not adult felons.*

SEC. 34. Funding of Drug Court Programs for Qualifying Adult Felons Through Track III.

SEC. 34.1. Section 11970.3 of the Health and Safety Code is amended to read:

11970.3. (a) ~~It is the intent of the Legislature~~ *people that all programs for adult felons who qualify for Track III treatment diversion, including those*

programs which may have functioned before enactment of Section 1210.2 of the Penal Code, shall, beginning July 1, 2009, this chapter be funded principally by the annual appropriation for Track III diversion programs described in subdivision (c) of Section 11999.6, with all other programs for persons who do not qualify for Track III treatment diversion to be funded by an appropriation appropriations in the annual Budget Act.

(b) Up to 5 percent of the amount appropriated by the annual Budget Act for programs authorized in this section, and not serving adult felons who qualify for Track III diversion programs, is available to the department and the Judicial Council to administer the program, including technical assistance to counties and development of an evaluation component.

SEC. 35. Repeal of Substance Abuse Offender Treatment Program.

SEC. 35.1. Section 11999.30 of the Health and Safety Code is amended to read:

11999.30. (a) *The people find that it is duplicative and unnecessary to maintain separate funding streams for the same group of drug offenders eligible for treatment. This section is hereby repealed, effective July 1, 2009. Any funds appropriated or allocated pursuant to this section may be distributed and used as provided by its terms; however, any such funds held by the state or a county after January 1, 2010, shall be transferred to the county's fund for youth programs established pursuant to subdivision (b) of Section 11999.6.2. This division shall be known as the Substance Abuse Offender Treatment Program. Funds distributed under this division shall be used to serve offenders who qualify for services under the Substance Abuse and Crime Prevention Act of 2000, including any amendments thereto. Implementation of this division is subject to an appropriation in the annual Budget Act.*

(b) *The department shall distribute funds for the Substance Abuse Offender Treatment Program to counties that demonstrate eligibility for the program, including a commitment of county general funds or funds from a source other than the state, which demonstrates eligibility for the program. The department shall establish a methodology for allocating funds under the program, based on the following factors:*

(1) *The percentage of offenders ordered to drug treatment that actually begin treatment;*

(2) *The percentage of offenders ordered to treatment that completed the prescribed course of treatment;*

(3) *Any other factor determined by the department;*

(c) *The distribution of funds for this program to each eligible county shall be at a ratio of nine dollars (\$9) for every one dollar (\$1) of eligible county matching funds;*

(d) *County eligibility for funds under this division shall be determined by the department according to specified criteria, including, but not limited to, all of the following:*

(1) *The establishment and maintenance of dedicated court calendars with regularly scheduled reviews of treatment progress for persons ordered to drug treatment;*

(2) *The existence or establishment of a drug court, or a similar approach, and willingness to accept defendants who are likely to be committed to state prison;*

(3) *The establishment and maintenance of protocols for the use of drug testing to monitor offenders' progress in treatment;*

(4) *The establishment and maintenance of protocols for assessing offenders' treatment needs and the placement of offenders at the appropriate level of treatment;*

(5) *The establishment and maintenance of protocols for effective supervision of offenders on probation;*

(6) *The establishment and maintenance of protocols for enhancing the overall effectiveness of services to eligible parolees;*

(e) *The department, in its discretion, may limit administrative costs in determining the amount of eligible county match, and may limit the expenditure of funds provided under this division for administrative costs. The department may also require a limitation on the expenditure of funds provided under this division for services other than direct treatment costs, as a condition of receipt of program funds;*

(f) *To receive funds under this division, a county shall submit an application to the department documenting all of the following:*

(1) *The county's commitment of funds, as required by subdivision (b);*

(2) *The county's eligibility, as determined by the criteria set forth in subdivision (d);*

(3) *The county's plan and commitment to utilize the funds for the purposes of the program, which may include, but are not limited to, all of the following:*

(A) *Enhancing treatment services for offenders assessed to need them; including residential treatment and narcotic replacement therapy;*

(B) *Increasing the proportion of sentenced offenders who enter, remain in, and complete treatment, through activities and approaches such as colocation of services, enhanced supervision of offenders, and enhanced services determined necessary through the use of drug test results;*

(C) *Reducing delays in the availability of appropriate treatment services;*

(D) *Use of a drug court or similar model, including dedicated court calendars with regularly scheduled reviews of treatment progress, and strong collaboration by the courts, probation, and treatment;*

(E) *Developing treatment services that are needed but not available;*

(F) *Other activities, approaches, and services approved by the department, after consultation with stakeholders;*

(g) *The department shall audit county expenditures of funds distributed pursuant to this division. Expenditures not made in accordance with this division shall be repaid to the state;*

(h) *The department shall consult with stakeholders and report during annual budget hearings on additional recommendations for improvement of programs and services, allocation and funding mechanisms, including, but not limited to, competitive approaches, performance-based allocations, and sources of data for measurement;*

(i) (1) *For the 2006-07 and 2007-08 fiscal years, the department may implement this division by all-county letters or other similar instructions, and need not comply with the rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Commencing with the 2008-09 fiscal year, the department may implement this section by emergency regulations, adopted pursuant to paragraph (2);*

(2) *Regulations adopted by the department pursuant to this division shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11346.1 of the Government Code, any emergency regulations adopted pursuant to this division shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the department. Nothing in this paragraph shall be interpreted to prohibit the department from adopting subsequent amendments on a nonemergency basis or as emergency regulations in accordance with the standards set forth in Section 11346.1 of the Government Code;*

SEC. 36. Section 11999.5 of the Health and Safety Code is amended to read:

11999.5. Funding Appropriation.

*Upon passage of this act, \$60,000,000 shall be continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund for the 2000-01 fiscal year. There is hereby continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund an additional \$120,000,000 for the 2001-02 fiscal year, and an additional sum of \$120,000,000 for each such subsequent fiscal year concluding with the 2005-06 fiscal year. These funds shall be transferred to the Substance Abuse Treatment Trust Fund on July 1 of each of these specified fiscal years. Funds*

*(a) There is hereby appropriated from the General Fund to the Substance Abuse Treatment Trust Fund the amount of one hundred fifty million dollars (\$150,000,000), for the period from January 1, 2009, to June 30, 2009, and the amount of four hundred sixty million dollars (\$460,000,000), annually for each full fiscal year thereafter, commencing with the 2009-10 fiscal year, with annual adjustments for price inflation, and adjustments once every five years for changes in the state population, as specified in subdivision (c).*

*(b) The Department of Finance shall annually, in the month of May, calculate and publicly announce the adjusted funding level for each upcoming fiscal year. The Controller shall transfer funds in the amount calculated by the Department of Finance from the General Fund to the Substance Abuse Treatment Trust Fund on the first day of each fiscal year.*

*(c) The Department of Finance shall calculate annual funding levels by making an annual adjustment to the baseline figure appropriated for the 2009-10 fiscal year to account for price inflation, with the year 2009 to be used as the baseline year, and by making an adjustment, once every five years, to account for changes in the state population during the previous five years, with the first such adjustment to be made for the 2016-17 fiscal year.*



The adjustment for price inflation shall be made with the Implicit Price Deflator for state and local government purchases, as published by the U.S. Department of Commerce, Bureau of Economic Analysis, or a comparable tool published by a similar or successor agency if that data source is unavailable, and shall be based upon the last data point available before the start of the fiscal year. Adjustments for changes in the state population shall use data published by the United States Census Bureau.

(d) Funds transferred to the Substance Abuse Treatment Trust Fund are not subject to annual appropriation by the Legislature and may be used without a time limit. Nothing in this section precludes additional appropriations by the Legislature to the Substance Abuse Treatment Trust Fund.

SEC. 37. Section 11999.5.1 is added to the Health and Safety Code, to read:

*11999.5.1. State and local agency oversight.*

"Department" refers to the State Department of Alcohol and Drug Programs when used in the context of Track I, Track II, Track III, and youth programs, unless otherwise stated, and is designated the agency responsible for distribution of all moneys provided pursuant to Sections 11999.4 to 11999.14, inclusive. Each county shall appoint as local lead agency its alcohol and drug programs administrator, unless the Oversight Commission approves a county's request to appoint another local agency.

SEC. 38. Section 11999.5.2 is added to the Health and Safety Code, to read:

*11999.5.2. Oversight Commission.*

(a) There is hereby created the Treatment Diversion Oversight and Accountability Commission (Oversight Commission), which shall be convened to review, direct, and approve the implementation, by the State Department of Alcohol and Drug Programs, of the programs and policies related to Track I, Track II, Track III, and youth programs. Regulations of general applicability promulgated by the department that pertain to programs required under Sections 1210.01 to 1210.05, inclusive, and Sections 1210.1 and 1210.2 of the Penal Code, and funded pursuant to Sections 11999.4 to 11999.14, inclusive, of this code, shall not take effect without approval by the Oversight Commission. The commission shall have the powers and responsibilities specified in subdivision (b) for regulatory and fiscal matters. Regulations subject to board approval shall not be subject to the Administrative Procedures Act or to review and approval by the Office of Administrative Law.

(b) The Oversight Commission shall do the following:

(1) Review and approve by a majority vote:

(A) All regulations regarding county-level implementation issues related to programs required under this act, and the use of funds provided for Track I, Track II, Track III, and youth programs;

(B) A distribution formula for funding provided pursuant to Section 11999.6. The commission may approve a formula for distribution of funding for youth programs that differs substantially from the formula for funding for adults;

(C) Any regulation placing contingencies on up to 10 percent of a county's allocation, as provided in subdivision (d) of Section 11999.6;

(D) Regulations pertaining to counties' use of funding provided under this act to provide supportive services other than drug treatment services, as described in subdivision (a) of Section 11999.6;

(E) Regulations pertaining to the use of funds for youth programs, including the establishment of guidelines by the Oversight Commission to define target populations of youth under the age of 18 who are nonviolent and at risk of committing future drug offenses;

(F) Any county's request to appoint, as lead agency responsible for distribution of moneys provided under this act, an agency other than the county alcohol and drug programs administrator;

(G) Any proposal to order researchers to study any issue beyond the scope of studies already approved;

(H) The annual amount proposed by the department to be set aside for addiction training programs, implementation trainings, and conferences;

(I) The annual amount proposed by the department to be set aside for use for direct contracts with drug treatment service providers in counties where demand for drug treatment services, including opioid agonist treatment, is not adequately met by existing programs;

(J) The annual amount proposed by the department to be set aside for studies by public universities as provided by Section 11999.10;

(K) Regulations pertaining to clinical assessments, including guidelines and requirements for persons performing assessments and the selection of a standardized assessment tool or tools;

(L) All requirements for county plans, including the frequency with which such plans must be submitted, and any limits on the amounts of money to be

available for use for incentives and rewards, limits on annual carryover funds or reserves, requirements to address the provision of culturally and linguistically appropriate services that are geographically accessible to the relevant communities, the dissemination of overdose awareness and prevention materials and strategies in county jails, and the provision of training on harm reduction practices and the implementation of harm reduction therapy and services;

(M) All county plans, after review by the department;

(N) Any petition by a county with a population of less than 100,000 to be exempt from regulations regarding treatment and non-treatment costs. Any such approval shall be valid for four years;

(O) Any corrective action proposed in lieu of repayment by a county found not to have spent funds in accordance with the requirements of this act;

(P) The range of data to be collected on each county annual report form;

(Q) The range of data to be required to be collected by courts regarding defendants' failure to begin treatment within 30 days, as provided by subdivision (j) of Section 1210.03, paragraph (1) of subdivision (h) of Section 1210.1, and subdivision (f) of Section 1210.2 of the Penal Code;

(R) The issues and range of data to be addressed in an annual report by the department regarding programs conducted pursuant to this act; and

(S) All research plans for outside evaluation pursuant to Section 11999.10.

(2) Require the department to provide data related to Track I, Track II, Track III, and youth programs;

(3) Require counties to provide data related to Track I, Track II, Track III, and youth programs;

(4) Develop oversight and enforcement mechanisms to ensure the provision of opioid agonist treatment consistent with this act;

(5) Develop and approve, in consultation with the State Department of Alcohol and Drug Programs, the program and agenda, invitation list, and budget for an annual statewide conference on drug treatment diversion pursuant to this act; and

(6) Conduct public meetings and invite and consider public comment, provided, however, that the Oversight Commission need not respond to all comments before giving approval to regulations or taking other actions.

(c) The Oversight Commission shall be empanelled no later than July 1, 2009. It shall consist of the following 23 voting members: five treatment providers, including three to be appointed by the Speaker of the Assembly, of which at least one shall be a physician specializing in addiction, and at least one person shall be a provider specializing in treatment of youth under the age of 18, and with two such appointments made by the President of the Senate, of which one person shall be a member of a statewide association of treatment providers; two mental health service providers who work in programs providing services to persons with a dual diagnosis of mental illness and substance abuse, of which one person shall be a member of a statewide association of mental health service providers, with both such appointments made by the Governor; two county alcohol and drug program administrators, with both appointments made by the President of the Senate; two drug treatment program counselors, including one who is a member of a statewide association of counselors, with both appointments made by the Governor; two probation department executives or officers, with both appointments made by the Governor; one person formerly a participant in a treatment program established pursuant to the Substance Abuse and Crime Prevention Act of 2000, or Track I or Track II of this act, appointed by the Governor; two criminal defense attorneys, including one public defender and one attorney in private defense practice, with both appointments made by the Speaker of the Assembly; two public policy researchers from public or private universities in California, with both appointments made by the President of the Senate; two members of organizations concerned with civil rights, drug laws and/or drug policies, to be appointed by the President of the Senate; three law enforcement professionals and/or members of the judiciary, who must each be in active service or retired from active service, to be appointed by the Governor and confirmed by the Senate.

(d) On July 1, 2011, the terms of the following members shall expire: the two treatment provider representatives appointed by the Speaker, one treatment provider representative appointed by the President of the Senate, one public policy researcher, one criminal defense attorney, one representative of law enforcement or the judiciary, one county alcohol and drug program administrator, one drug treatment program counselor, one mental health service provider, one person representing organizations concerned with civil rights, drug laws and/or drug policies, one representative of the probation department, executives or officers, and the former participant in a treatment program. On July 1, 2012, the terms of the following members shall expire: one

treatment provider representative appointed by the Speaker and one treatment provider representative appointed by the President of the Senate, one drug treatment program counselor, one mental health service provider, one county alcohol and drug program administrator, one representative of the probation department, executives or officers, one criminal defense attorney, one person representing organizations concerned with civil rights, drug laws and/or drug policies, one public policy researcher, and two representatives of law enforcement or the judiciary. For appointments made to the first commission to be empanelled by no later than July 1, 2009, the Speaker, the President of the Senate, and the Governor shall indicate on which of the specified dates each term of each individual representative appointed by them shall expire when there is more than one possible date of expiration for that category of appointment. Successor members shall be appointed in the same manner, and hold office for terms of four years, each term to commence on the expiration date of the predecessor. Any appointment of a vacancy that occurs for any reason other than the expiration of the term shall be for the remainder of the unexpired term. Members are eligible for reappointment.

(e) Members of the Oversight Commission other than government employees shall receive a per diem to be determined by the Director of the Department, but not less than the usual per diem rate allowed to department employees during travel out of state. All members shall be reimbursed by the department for all necessary expenses of travel actually incurred attending meetings of the board and in the performance of their duties. All expenses shall be paid by the department, and the department shall also provide staff for the board sufficient to support and facilitate its operations. For purposes of compensation, attendance at meetings of the commission by a state or local government employee shall be deemed performance of the duties of his or her state or local government employment.

SEC. 39. Section 11999.6 of the Health and Safety Code is amended to read:

11999.6. (a) Moneys deposited in the Substance Abuse Treatment Trust Fund shall be distributed annually by the Secretary of the Health and Human Services Agency through the State Department of Alcohol and Drug Programs to counties to cover the costs of youth programs and placing persons in and providing drug treatment programs under Track I, Track II, and Track III as provided in this act, and vocational training, family counseling, mental health services, harm reduction therapy and services and literacy training, and, where permitted by regulations approved by the Oversight Commission, for housing assistance, childcare, and transportation to and from clinical assessment, court appearances, drug treatment, mental health services, and other court-mandated services and ancillary services such as vocational training, family counseling, harm reduction therapy and services, and literacy training accessed pursuant to under this act. Additional costs that may be reimbursed from the Substance Abuse Treatment Trust Fund include probation department costs, court monitoring costs, and any miscellaneous costs made necessary by the provisions of this act, ~~other than except for drug testing services of any kind in youth programs or for defendants participating in Track I or Track II. The department may use funds appropriated by this act to prepare and present an annual calculation of the need for funding for drug testing services. Incarceration costs cannot be reimbursed from the fund. Those moneys shall be allocated to counties through a fair and equitable distribution formula established by the Oversight Commission. that includes; but is not limited to, per capita arrests for controlled substance possession violations and substance abuse treatment caseload, as determined by the department as necessary to carry out the purposes of this act. The department may shall reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or areas in which the director of the department or the Oversight Commission has determined that demand for drug treatment services, including opioid agonist treatment, is not adequately met by existing programs. However, nothing in this section shall be interpreted or construed to allow any entity, including the department or any county, to use funds from the Substance Abuse Treatment Trust Fund to supplant funds from any existing other fund source or mechanism currently used to provide substance abuse treatment, except for grants awarded pursuant to the Drug Court Partnership Act or Comprehensive Drug Court Implementation Act, which may be supplanted by Track III funds. Funding provided by the Substance Abuse Treatment Trust Fund shall cover those portions of care that cannot be paid for by other means, such as public or private insurance, mental health services funding from the Mental Health Services Fund, treatment program funding from the Department of Corrections and Rehabilitation, an individual defendant's contributions, or other funding sources for which the defendant is eligible. In addition, funds from the Substance Abuse Treatment Trust Fund~~

shall not be used to fund in any way the drug treatment courts established pursuant to Article 2 (commencing with Section 11970.1) or Article 3 (commencing with Section 11970.4) of Chapter 2 of Part 3 of Division 10.5, including drug treatment or probation supervision associated with those drug treatment courts:

(b) Prior to calculating the annual allocations for distribution to counties, the department shall withhold funds, in amounts approved by a majority of the Oversight Commission, from the Substance Abuse Treatment Trust Fund sufficient to:

(1) Provide for direct contracts between the department and drug treatment providers in counties that have been determined, by the director or the Oversight Commission, to provide inadequate access to drug treatment services, including opioid agonist treatment and other medication-assisted treatments;

(2) Provide addiction training programs for persons required to receive such training under this act or for persons authorized to receive such training by the Oversight Commission consistent with this act;

(3) Produce implementation training programs and/or conferences for local stakeholders; and

(4) Pay for studies by public universities as provided by Section 11999.10.

(c) Subject to modification as provided in subdivision (d), funds remaining in the Substance Abuse Treatment Trust Fund shall be allocated annually as follows, in subaccounts of the trust fund:

(1) Fifteen percent for youth programs, as defined in subdivision (n) of Section 1210 of the Penal Code.

(2) Fifteen percent for treatment and related costs for Track I diversion programs, provided pursuant to Section 1210.03 of the Penal Code.

(3) Sixty percent for treatment and related costs for Track II diversion programs, provided pursuant to Section 1210.1 of the Penal Code.

(4) Ten percent for treatment and related costs for Track III diversion programs, provided pursuant to Section 1210.2 of the Penal Code.

(d) Upon the enactment of regulations promulgated by the department and approved by the Oversight Commission, distribution of up to 10 percent of the allocation to counties for Track I, Track II, and/or Track III programs may be made contingent upon specific requirements to adopt best practices, create innovative programs, and/or establish programs for underserved populations, and may be subject to a county matching requirement. Any regulation making a portion of county allocations contingent in this manner shall specify the disposition of funds not accessed by counties for failure to meet the specific requirements. Absent any such regulations, the department shall not place any contingency involving a county matching requirement on the allocations for Track I, Track II, or Track III programs.

(e) Notwithstanding the creation of Track III diversion programs in this act, and the requirement for 10 percent of funding from the trust fund to go to such programs, no provision of this act shall be interpreted to preclude:

(1) The creation or maintenance of innovative programs providing court-supervised treatment to persons or defendants not eligible for treatment under the terms of this act;

(2) The appropriation, by the Legislature, of separate funding for programs for court-supervised treatment for persons or defendants not eligible for treatment under the terms of this act; or

(3) The use, by local court-supervised treatment programs, of funds provided by a county, the federal government, or private sources.

SEC. 40. Section 11999.6.1 of the Health and Safety Code is amended to read:

11999.6.1. *Payment of Treatment Costs for Parolees.*

Notwithstanding Section 11999.6, the costs of drug treatment and related services, including mental health services, for parolees placed into treatment under the terms of this act shall be paid by the Department of Corrections and Rehabilitation and not by funds from the Substance Abuse and Treatment Trust Fund.

(a) Notwithstanding any other provision of law, when the department allocates funds appropriated to the Substance Abuse Treatment Trust Fund, it shall withhold from any allocation to a county the amount of funds previously allocated to that county from the fund that are projected to remain unencumbered, up to the amount that would otherwise be allocated to that county. The department shall allow a county with unencumbered funds to retain a reserve of 5 percent of the amount allocated to that county for the most recent fiscal year in which the county received an allocation from the fund without a reduction pursuant to this subdivision.

(b) The department shall allocate 75 percent of the amount withheld pursuant to subdivision (a) in accordance with Section 11999.6 and any

regulations adopted pursuant to that section, but taking into account any amount withheld pursuant to subdivision (a):

(c) The department shall reserve 25 percent of the amount withheld pursuant to subdivision (a) until all counties have submitted final actual expenditures for the most recent fiscal year. The department shall then allocate the funds reserved to adjust for actual rather than projected unencumbered funds, to the extent that the amount reserved is adequate to do so. Any balance of funds not reallocated pursuant to this subdivision shall be allocated in accordance with subdivision (e).

(d) If the department determines from actual expenditures that more funds should have been withheld from any county than were withheld pursuant to subdivision (a), it shall adjust any allocations pursuant to subdivision (c) accordingly, to the extent possible. If one or more counties fails to report actual expenditures in a timely manner, the department may, in its discretion, proceed with the available information, and may exclude any nonreporting county from any allocations pursuant to this section.

(e) If revenues, funds, or other receipts to the Substance Abuse Treatment Trust Fund are sufficient to create additional allocations to counties, through reconsideration of unencumbered funds, audit recoveries, or otherwise, the Director of Finance may authorize expenditures for the department in excess of the amount appropriated no earlier than 30 days after notification in writing of the necessity therefor is provided to the chairpersons of the fiscal committees in each house and the Chairperson of the Joint Legislative Budget Committee, or at an earlier time that the Chairperson of the Joint Legislative Budget Committee, or his or her designee, may in each instance determine.

(f) The department may implement this section by All-County Lead Agency letters or other similar instructions, and need not comply with the rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

SEC. 41. Section 11999.6.2 is added to the Health and Safety Code, to read:

11999.6.2. *County Management of Funds.*

(a) *County plans.* Counties shall submit to the department and the Oversight Commission their plans for implementation and spending for programs funded pursuant to this act at least once every three years, or more frequently as provided in regulations approved by the Oversight Commission. A county with a population of less than 100,000 may petition the Oversight Commission to create and submit plans jointly with one or more additional counties.

(b) *Segregation of Funds.* Counties receiving funds pursuant to Section 11999.6 shall establish three separate trust funds: one for Track I and Track II programs, one for Track III programs, and one for youth programs. Counties shall segregate all funds received from the state appropriately. Notwithstanding these requirements, a county with a population of less than 100,000 may petition the Oversight Commission for an exemption from these restrictions.

(c) *Regulation of Treatment and Non-Treatment Costs.* Counties shall spend a minimum of 80 percent of the funds provided pursuant to Section 11999.6 for Track I and Track II treatment diversion programs on the delivery of treatment and support services, with up to 20 percent allowable for non-treatment costs including probation department costs, court monitoring costs, and other costs made necessary by this act. The Oversight Commission shall approve regulations to categorize costs as treatment costs or non-treatment costs, to specify allowable percentages of non-treatment costs for Track III programs, and to describe permissible uses of funds provided for youth programs. Notwithstanding these requirements, a county with a population of less than 100,000 may petition the Oversight Commission for an exemption from these restrictions.

(d) *Excess Funds. Youth Treatment.* For the 2008–09, 2009–10, 2010–11, and 2011–12 fiscal years, a county may retain unspent funds received from the Substance Abuse Treatment Trust Fund to use those funds in a future year. Thereafter, all unspent funds shall be subject to regulations approved by the Oversight Commission regarding reserve funds. Other than funds placed in a reserve in accordance with an approved county plan, any funds allocated to a county which have not been spent for their authorized purpose within three years shall be transferred to the county's fund for youth programs.

(e) *Local Research.* A county may use a portion of funds provided pursuant to Section 11999.6 to pay for independent research studies, provided that the county has received prior approval to contract for such research from the department and Oversight Commission.

SEC. 42. Section 11999.8 of the Health and Safety Code is amended to read:

11999.8. *Surplus Funds.*

Any funds remaining in the Substance Abuse Treatment Trust Fund at the

end of a fiscal year may shall be utilized to pay for youth programs or drug treatment programs provided to defendants in Track I, II, or III to be carried out in the subsequent fiscal year.

SEC. 43. Section 11999.9 of the Health and Safety Code is amended to read:

11999.9. *The department shall annually publish data regarding the programs conducted pursuant to this act. Publication of annual data shall occur no more than five months after the end of the fiscal year. The Oversight Commission shall establish the range of data to be published in such annual reports, which shall include all caseload and fiscal data required for the reports required of the Office of the Legislative Analyst pursuant to Section 11999.9.1. The reports may be published electronically. The department shall furnish all data to the Office of the Legislative Analyst, upon request, as soon as it is practical to do so. (a) The department shall conduct three two-year followup studies to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this act, and submit those studies to the Legislature no later than January 1, 2009, January 1, 2011, and January 1, 2013, respectively. The evaluation studies shall include, but not be limited to, a study of the implementation process, a review of lower incarcerations costs, reductions in crime, reduced prison and jail construction, reduced welfare costs, the adequacy of funds appropriated, and other impacts or issues the department can identify, in addition to all of the following:*

(1) Criminal justice measures on rearrests, jail and prison days averted, and crime trends:

(2) A classification, in summary form, of rearrests as having occurred as a result of:

(A) A parole violation;

(B) A parole revocation;

(C) A probation violation;

(D) A probation revocation;

(3) A classification, in summary form, of the disposition of crimes committed in terms of whether the person was:

(A) Retained on probation;

(B) Sentenced to jail;

(C) Sentenced to prison;

(4) Treatment measures on completion rates and quality of life indicators, such as alcohol and drug used, employment, health, mental health, and family and social supports;

(5) A separate discussion of the information described in paragraphs (1) to (3), inclusive, for offenders whose primary drug of abuse was methamphetamine or who were arrested for possession or use of methamphetamine and, commencing with the report due on or before January 1, 2009, the report shall include a separate analysis of the costs and benefits of treatment specific to these methamphetamine offenders.

(b) In addition to studies to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this act, the department shall produce an annual report detailing the number and characteristics of participants served as a result of this act, and the related costs:

SEC. 44. Section 11999.9.1 is added to the Health and Safety Code, to read:

11999.9.1. *Funding Recommendations.*

In each of the 2010–11, 2012–13, and 2013–14 fiscal years, and periodically thereafter, the Office of the Legislative Analyst shall publish an evaluation of the adequacy of funding provided for programs pursuant to Sections 1210.01 to 1210.04, inclusive, and Sections 1210.1 and 1210.2 of the Penal Code, in the prior year. The report shall provide recommendations to the Legislature for any additional funding that might be necessary for drug treatment, support services, or related programs, to the extent such needs can be calculated or estimated, with due consideration of the levels of service recommended for participating defendants by researchers, treatment providers, physicians, county alcohol and drug program administrators, and other stakeholders. The report may make separate recommendations for funding that take account of the fiscal condition of the state and of the counties.

SEC. 45. Section 11999.10 of the Health and Safety Code is amended to read:

11999.10. The department shall allocate at least 1 percent of the fund's total moneys in fiscal years 2009–10 to 2014–15, inclusive, and up to 0.5 2 percent of the fund's total moneys each year in subsequent fiscal years, for studies to be conducted by two public universities in California, one in the northern half of the state and one in the southern half of the state, aimed at evaluating the effectiveness and financial impact of Track I, Track II, and



Track III treatment diversion programs and youth programs. Reports and studies paid for under this section shall be published jointly by the two universities, and shall not be subject to approval by the department.

One study to be published at least once every three years shall consist of a cost-benefit analysis of state and local drug enforcement and interdiction policies, including perspectives on economics, public health, public policy, and the law. This study, in part, must address the impacts of drug law enforcement efforts on individuals, families, and communities, and shall examine, through quantitative and qualitative analysis, (a) any disparate impacts based on race, sex, and socioeconomic status, (b) the relationship between any disparate impacts and the decisions, strategies, and practices of local and state drug enforcement officials, and (c) the collateral consequences of drug laws, policies, and enforcement.

The Oversight Commission may order studies of specific additional issues, by a majority vote, to fund the costs of the studies required in Section 11999.9 by a public or private university.

SEC. 46. Section 11999.11 of the Health and Safety Code is amended to read:

11999.11. County Reports.

~~Counties~~ Each county shall submit a report annually to the department detailing the numbers and characteristics of clients-participants served as a result of funding provided by this act, ~~and any other data that may be required.~~ The department shall promulgate a form, ~~to be approved by the Oversight Commission,~~ which shall be used by the counties for the reporting of this information, as well as any other information that may be required ~~by the department.~~ ~~The form shall require counties to report the amount of money spent for drug treatment services and testing for defendants participating in Track III programs, and shall require counties to provide data regarding the adequacy of funding.~~ The department shall establish a deadline by which the counties shall submit their reports. ~~The department shall promptly provide the reports in electronic form for public consumption, provided that the department shall redact any information as to which federal law or the California Constitution prohibits disclosure.~~

SEC. 47. Section 11999.12 of the Health and Safety Code is amended to read:

11999.12. The department shall conduct periodic audits of the expenditures made by any county that is funded, in whole or in part, with funds provided by this act. Counties shall repay to the department any funds that are not spent in accordance with the requirements of this act. ~~With approval by a majority of the Oversight Commission,~~ ~~The~~ the department may require a corrective action by the county in the place of repayment, ~~as determined by the department.~~

SEC. 48. Section 11999.13 of the Health and Safety Code is amended to read:

11999.13. Excess Funds Treatment Diversity.

~~At the end of each fiscal year, a county may retain unspent funds received from the Substance Abuse Treatment Trust Fund and may spend those funds, if approved by the department, on drug treatment programs that further the purposes of this act. The department shall promulgate regulations, with approval by a majority of the Oversight Commission, that require county plans to address the provision of culturally and linguistically appropriate services that are geographically accessible to the relevant communities.~~

SEC. 49. Section 11999.14 is added to the Health and Safety Code, to read:

11999.14. Drug Overdose Prevention.

Any county jail housing probationers or parolees pursuant to Track II or III of this act, or Section 3063.01 of the Penal Code, must provide drug overdose awareness and prevention materials and strategies to all inmates prior to their release. The materials and strategies shall be developed by each county's department of alcohol and drug programs in consultation with physicians specializing in addiction and practitioners specializing in harm reduction, and must be designed and disseminated in a manner calculated to most effectively reach the jail's inmate populations and shall be described in the county plans. The State Department of Alcohol and Drug Programs shall review the county overdose materials and strategies for evidence-based best practices.

SEC. 50. Eligibility for Mental Health Services for Persons Dually Diagnosed and in Programs Under Treatment Diversion Tracks I, II and III.

SEC. 50.1. Section 5600.33 is added to the Welfare and Institutions Code, to read:

5600.33. For purposes of subdivision (b) of Section 5600.3, adults with a serious mental disorder shall include adults who are in drug treatment programs pursuant to the provisions of Sections 1210.01 to 1210.05, inclusive,

and Sections 1210.1 and 1210.2, of the Penal Code, and who have been diagnosed with a mental illness coincident with a diagnosis of substance abuse or addiction, and who meet the requirements of paragraphs (2) and (3) of subdivision (b) of Section 5600.3. Such adults shall be considered to have a severe mental illness and shall be eligible for services pursuant to Section 5813.5, utilizing funds in accordance with paragraph (5) of subdivision (a) of Section 5892. Furthermore, each update of a county's plan pursuant to Section 5847 shall include provisions documenting the county's efforts to serve qualifying adults in drug treatment programs pursuant to Sections 1210.01 to 1210.05, inclusive, and Sections 1210.1 and 1210.2, of the Penal Code, and who have been diagnosed with a mental illness coincident with a diagnosis of substance abuse or addiction. However, nothing in this section shall be construed to require payment for mental health services for parolees from the Mental Health Services Fund.

SEC. 51. Inclusion of Drug Treatment Stakeholders in Mental Health Service Planning.

SEC. 51.1. Section 5848 of the Welfare and Institutions Code is amended to read:

5848. (a) Each plan and update shall be developed with local stakeholders including adults and seniors with severe mental illness, families of children, adults and seniors with severe mental illness, providers of services, drug treatment providers, county alcohol and drug program agencies, members of the judiciary, law enforcement agencies, education, social services agencies and other important interests. A draft plan and update shall be prepared and circulated for review and comment for at least 30 days to representatives of stakeholder interests and any interested party who has requested a copy of such plans.

(b) The mental health board established pursuant to Section 5604 shall conduct a public hearing on the draft plan and annual updates at the close of the 30-day comment period required by subdivision (a). Each adopted plan and update shall include any substantive written recommendations for revisions. The adopted plan or update shall summarize and analyze the recommended revisions. The mental health board shall review the adopted plan or update and make recommendations to the county mental health department for revisions.

(c) The department shall establish requirements for the content of the plans. The plans shall include reports on the achievement of performance outcomes for services pursuant to Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division funded by the Mental Health Services Fund and established by the department.

(d) Mental health services provided pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, shall be included in the review of program performance by the California Mental Health Planning Council required by paragraph (2) of subdivision (c) of Section 5772 and in the local mental health board's review and comment on the performance outcome data required by paragraph (7) of subdivision (a) of Section 5604.2.

SEC. 52. Repeal of Ballot Referral Provision.

SEC. 52.1. Section 9 of Chapter 63 of the Statutes of 2006 is hereby repealed:

~~SEC. 9. The provisions of this bill shall be applied prospectively. If any provision of this bill is found to be invalid, the entire legislative measure shall be submitted to the voters at the next statewide election.~~

SEC. 53. Effective Date.

Except as otherwise provided, the provisions of this act shall become effective July 1, 2009, and its provisions shall be applied prospectively.

SEC. 54. Amendment.

Except as otherwise provided herein, this act may be amended only by a statute approved by the electors, or by a statute that is approved by a four-fifths majority of all members of each house of the Legislature and that furthers the purposes of this act. However, those portions of the Penal Code and Health and Safety Code enacted as part of the Substance Abuse and Crime Prevention Act of 2000 that are not referenced or modified herein may be modified pursuant to the provisions of that measure.

In any litigation involving the constitutionality of any such legislatively enacted statute, the party or parties contending that the statute is constitutional shall have the burden of proving its compliance with the foregoing requirements.

SEC. 55. Education Funding Guarantee.

No provision of this act shall be construed to alter the calculation of the minimum state obligations under Section 8 of Article XVI of the California

Constitution, nor to diminish the actual state and local support for K–14 schools required by law, except as authorized by the Constitution.

#### SEC. 56. Conflicting Ballot Measures.

In the event that this measure relating to protecting our communities by providing rehabilitation programs and drug treatment for youth and nonviolent offenders, and any other criminal justice measure or measures that do not provide rehabilitation to inmates being released into society, are approved by a majority of voters at the same election, and this measure regarding rehabilitation of nonviolent offenders receives a greater number of affirmative votes than any other such measure or measures, this measure shall control in its entirety and conflicting provisions in the other measure or measures shall be void and without legal effect. If this measure regarding rehabilitation of youth and nonviolent offenders is approved but does not receive a greater number of affirmative votes than said other measure or measures, this measure shall take effect to the extent permitted by law.

#### SEC. 57. Severability.

If any provision of this act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this initiative which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this initiative are severable.

## PROPOSITION 6

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to various codes; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

#### SECTION 1. TITLE

This act shall be known, and may be cited as, the “Safe Neighborhoods Act: Stop Gang, Gun, and Street Crime.”

#### SEC. 2. FINDINGS AND DECLARATIONS

(a) The people of the State of California find and declare that state government has no higher purpose or more challenging mandate than the protection of our families and our neighborhoods from crime.

(b) Almost every citizen has been, or knows someone who has been, victimized by crime.

(c) Although crime rates have fallen substantially since the early 1990s, there have been some disturbing increases in the last few years in several categories of crime. According to the Federal Bureau of Investigation, there were 477 more homicides in California in 2006 than there were in 1999, a period during which homicides and homicide rates declined in many other states. In addition, the California Department of Justice has reported that there were 74,000 more vehicle thefts in 2006 than in 1999 and that the number of robberies in our state jumped by over 7,500 between 2005 and 2006. More needs to be done to reduce crime and keep our communities safe.

(d) Gangs are a large part of the reason why California has not fared as well as many other states in recent years in terms of decreasing crime rates. Street gangs are largely responsible for increases in California homicides in recent years. Many gangs involve juveniles.

(e) Previously convicted felons and gang members commit the vast majority of gun crimes, including the killing of peace officers. Gangs have compromised our criminal justice system, routinely threatening and assaulting victims, witnesses, and even judges. It is essential that state laws and resources target these types of offenders.

(f) The proliferation of methamphetamine has created a multitude of crime problems, driving recent increases in vehicle and identity theft. Now the illegal drug of choice, methamphetamine is often sold by street gangs and, unlike many other drugs, is produced here in California. The effects of the drug are devastating on users and communities where its use is widespread.

(g) Our state adds several hundred thousand people to its population each year and must commit resources necessary to support increasing demands on criminal justice personnel and infrastructure. California’s law enforcement personnel, programs, technology, and infrastructure have not kept pace. In fact, the resources available to California law enforcement agencies are generally not as great as those found in communities in other states. According

to the U.S. Department of Justice, in 2004, 35 states had more sworn officers per 100,000 residents than California.

(h) Unfortunately, our Legislature has failed to address these problems in a comprehensive way. Programs to prevent crime and rehabilitate offenders are inadequate and unaccountable to the public. Penalties for certain crimes are not severe enough to deter. Enforcement efforts and deterrence programs that do work are often so erratically funded they cannot be sustained. Victims of crime are not afforded adequate information, protection, and support in the criminal justice system. In 2007, the State Senate abdicated its responsibility altogether, refusing to pass legislation that enhances criminal penalties.

(i) These conditions are unacceptable. Californians have used their constitutionally reserved power of initiative to enact comprehensive criminal justice reform in the past and it is time for us to do so again. Early intervention reduces crime and gang activity. Tougher criminal penalties reduce the number of crime victims.

#### SEC. 3. STATEMENT OF PURPOSE

In order to make our neighborhoods safe and reduce the number of crime victims, the people of the State of California hereby enact a comprehensive reform of our criminal justice laws in order to:

- (a) Improve programs to prevent crimes;
- (b) Enhance public involvement and public accountability;
- (c) Increase punishment to incapacitate criminals and deter crime;
- (d) Protect victims of crimes from abuse and ensure that they are treated with dignity at all stages of the criminal justice process; and
- (e) Provide supplemental and sustainable funding for law enforcement, crime prevention, and victim programs.

#### SEC. 4. INTERVENTION

SEC. 4.1. Title 12.6 (commencing with Section 14260) is added to Part 4 of the Penal Code, to read:

#### TITLE 12.6. OFFICE OF PUBLIC SAFETY EDUCATION AND INFORMATION

14260. (a) *There is hereby established the Office of Public Safety Education and Information.*

(b) *The primary objectives of the office are to deter crime, support crime victims, encourage public cooperation with law enforcement, and administer grant programs that pursue these goals. These objectives shall be met in part through public service announcements disseminated by the most efficient means including television, radio, the Internet, and the office’s own Web site.*

(c) *Public disclosures shall include, but not be limited to, information regarding the following themes and state laws: “Use a Gun and You’re Done,” “Three Strikes,” and “Jessica’s Law.” In addition, disclosures will incorporate comparative crime rates by specific offense, including homicide, rape, robbery, burglary, and vehicle theft; incarceration rates; and prison demographics that explain by offense the makeup of inmate population. Comparative information regarding crime and criminal justice resources may include year-to-year as well as state-to-state comparisons. Public disclosures shall also include the relative efficacy of programs to deter, educate, and rehabilitate, including, but not limited to, the disclosure of recidivism rates and subsequent arrests and convictions.*

(d) *The office shall maintain a publicly accessible Web site that shall include at least three discrete features:*

(1) *A public safety information page that shall include general information regarding the criminal justice system, current crime activity, safety advice, statistics, changes in the law, and links to related Web sites, including the California Department of Justice and the Federal Bureau of Investigation.*

(2) *A statewide neighborhood watch page, known as “Cal Watch,” providing informational support for and linking with local neighborhood watch programs and assisting communities, sheriffs, and police departments wishing to create new neighborhood watch programs.*

(3) *A crime victim information and support page shall link state and local programs that assist victims through the criminal justice process and provide services and reimbursement, including medical expenses, rape counseling, lost wages, and victim-paid rewards.*

(e) *The sum of twelve million five hundred thousand dollars (\$12,500,000) is hereby appropriated from the General Fund to the Office of Public Safety Education and Information for the 2009–10 fiscal year and annually thereafter, adjusted for cost of living changes pursuant to the California Consumer Price Index, for the purpose of augmenting resources of district attorneys and law enforcement agencies employed to assist victims or comply with victim notification requirements under the California Constitution or consistent statutory measures.*

(1) Twenty percent of the amount annually appropriated shall be distributed on a pro rata basis to participating county sheriffs' departments which maintain the Victim Information and Notification Everyday (VINE) program.

(2) Eighty percent of the amount annually appropriated shall support grant programs awarded to county district attorneys, sheriffs, and police departments in order to disseminate victim rights information and to assist victims of crime in gaining access to protective services, counseling, and loss reimbursement. Specific program and grant application requirements shall be promulgated by the office no later than March 30, 2009, and may be amended periodically. Applicant agencies may apply no later than June 15 preceding the fiscal year during which grant funds are sought.

(f) The Governor shall appoint an executive officer and staff, as reasonably necessary to implement the work of the office.

(g) The office shall work with state, local, and federal agencies to maximize public safety resources, secure matching funds, eliminate duplicative efforts, and help craft better public safety policies and practices.

SEC. 4.2. Section 13921 is added to the Government Code, to read:

13921. (a) There is hereby established the California Early Intervention, Rehabilitation, and Accountability Commission for the purpose of evaluating publicly funded programs designed to deter crime through early intervention, or reduce recidivism through rehabilitation, and to disclose those findings to the public. The commission shall adhere to the principle that limited public resources are best directed to programs that help limit incarceration through deterrence and focused rehabilitation rather than early release without meaningful accountability.

(b) The commission's long-term goal is to help identify and productively intervene with at-risk populations prior to incarceration, and, for those subject to incarceration, to identify programs and offenders with the greatest rehabilitative potential, so the most successful programs can be replicated.

(c) The commission is authorized to propose standards of accountability for publicly funded program providers and participants, make recommendations to continue, supplement, or decrease funding, and highlight favorable or unfavorable elements of the programs reviewed.

(d) The commission shall report annually to the Joint Legislative Audit Committee and the Governor regarding the expenditures and efficacy of publicly funded programs.

(e) All publicly funded early intervention programs shall have a clearly defined at-risk target population and identify participants so that participants' subsequent criminal involvement, if any, can be compared to similarly situated control groups.

(f) All publicly funded rehabilitation programs involving criminal offenders, including juveniles, shall be designed to help create a plan for the offenders' successful integration or reintegration into the community. Accordingly, all such programs shall have clearly defined goals and require the offender to develop skills to find employment, locate housing, overcome addiction, and/or develop a plan with the potential for successful reintegration.

(g) All recipient programs, including those directed toward early intervention and education, shall file an annual statement with the commission detailing staffing, curriculum, and program participation. Copies of annual statements to other granting authorities will be sufficient unless the commission requires additional information.

(h) The commission shall be comprised of nine members, consisting of three appointees of the Governor, including the chair; two Members of the Senate, one appointed by the Rules Committee and one by the Minority Leader; two Members of the State Assembly, one appointed by the Speaker and one by the Minority Leader; a retired judge appointed by the Chief Justice of the California Supreme Court; and the Attorney General or his or her designee. The members of the commission shall not receive compensation, but shall be reimbursed only for reasonable commission-related expenses.

(i) The Governor shall appoint an executive officer, who shall hire necessary staff to conduct research and administer to the commission, including staff to conduct periodic or random audits of all publicly funded programs, subject to budgetary limitations of the commission.

(j) Every early intervention or rehabilitation program funded in whole or in part with public funds shall make its physical facilities and financial records available to the commission as a condition of public funding.

(k) The commission may evaluate any early intervention, education, or rehabilitation program, juvenile or adult, public or private, for the purposes of comparative study.

SEC. 4.3. Section 749.22 of the Welfare and Institutions Code is amended to read:

749.22. To be eligible for this grant, each county shall be required to

establish a multiagency juvenile justice coordinating council that shall develop and implement a continuum of county-based responses to juvenile crime. The coordinating councils shall, ~~at a minimum,~~ include the chief probation officer, as chair, and one representative each from the district attorney's office, the public defender's office, the sheriff's department, the board of supervisors, the department of social services, the department of mental health, ~~a community-based drug and alcohol program, a city police department, the county office of education or a school district, and an at-large community representative.~~ In order to carry out its duties pursuant to this section, a coordinating council shall also include representatives from nonprofit community-based organizations providing services to minors. The board of supervisors shall be informed of community-based organizations participating on a coordinating council. The coordinating councils shall develop a comprehensive, multiagency plan that identifies the resources and strategies for providing an effective continuum of responses for the prevention, intervention, supervision, treatment, and incarceration of male and female juvenile offenders, including strategies to develop and implement locally based or regionally based out-of-home placement options for youths who are persons described in Section 602. ~~Counties may utilize community-punishment plans developed pursuant to grants awarded from funds included in the 1995 Budget Act to the extent the plans address juvenile crime and the juvenile justice system or local action plans previously developed for this program.~~ The plan shall include, but not be limited to, the following components:

(a) An assessment of existing law enforcement, probation, education, mental health, health, social services, drug and alcohol and youth services resources which specifically target at-risk juveniles, juvenile offenders, and their families.

(b) An identification and prioritization of the neighborhoods, schools, and other areas in the community that face a significant public safety risk from juvenile crime, such as gang activity, ~~daylight~~ burglary, ~~late-night~~ robbery, vandalism, truancy, controlled substance sales, firearm-related violence, and juvenile alcohol and drug use within the council's jurisdiction.

(c) A local action plan (LAP) for improving and marshaling the resources set forth in subdivision (a) to reduce the incidence of juvenile crime and delinquency in the areas targeted pursuant to subdivision (b) and the greater community. The councils shall prepare their plans to maximize the provision of collaborative and integrated services of all the resources set forth in subdivision (a), and shall provide specified strategies for all elements of response, including prevention, intervention, suppression, and incapacitation, to provide a continuum for addressing the identified male and female juvenile crime problem, and strategies to develop and implement locally based or regionally based out-of-home placement options for youths who are persons described in Section 602.

(d) Develop information and intelligence-sharing systems to ensure that county actions are fully coordinated, and to provide data for measuring the success of the grantee in achieving its goals. The plan shall develop goals related to the outcome measures that shall be used to determine the effectiveness of the program.

(e) Identify outcome measures which shall include, but not be limited to, the following:

(1) The rate of juvenile arrests in relation to the crime rate.

(2) The rate of successful completion of probation.

(3) The rate of successful completion of restitution and court-ordered community service responsibilities.

(f) No person employed by or representing the interest of any private entity, including a charitable nonprofit organization which has received or may receive grant funding for providing services for juvenile or adult offenders or at-risk populations, may serve on a coordinating council.

SEC. 4.4. Section 1951 of the Welfare and Institutions Code is amended to read:

1951. (a) There is hereby established the Youthful Offender Block Grant Fund.

(b) Allocations from the Youthful Offender Block Grant Fund shall be used to enhance the capacity of county probation, ~~mental health, drug and alcohol, and other county departments to provide or secure appropriate rehabilitative and supervision services to youthful offenders subject to Sections 731.1, 733, 1766, and 1767.35.~~ Counties, in expanding the Youthful Offender Block Grant allocation, shall provide all necessary services related to the custody and parole of the offenders.

(c) The county of commitment is relieved of obligation for any payment to the state pursuant to Section 912, 912.1, or 912.5 for each offender who is not committed to the custody of the state solely pursuant to subdivision (c) of

Section 733, and for each offender who is supervised by the county of commitment pursuant to subdivision (b) of Section 1766 or subdivision (b) of Section 1767.35. Savings from this provision shall be added to the Youthful Offender Block Grant Fund and directed to the probation department as specified in subdivision (b).

(d) There is hereby continuously appropriated from the General Fund ninety-two million five hundred thousand dollars (\$92,500,000) or the amount in Section 1953, 1954, or 1955, whichever is greater, for the 2009–10 fiscal year and each year thereafter adjusted for cost of living changes annually pursuant to the California Consumer Price Index. This amount shall be distributed in accordance with the formula in Section 1955 to assist counties for the expense of housing juvenile offenders.

SEC. 4.5. Section 30062.2 is added to the Government Code, to read:

30062.2. (a) There is hereby established the Juvenile Probation Facility and Supervision Fund.

(b) The sum of fifty million dollars (\$50,000,000) is hereby appropriated from the General Fund to the Juvenile Probation Facility and Supervision Fund for the 2009–10 fiscal year and annually each year thereafter, adjusted for cost of living changes pursuant to the California Consumer Price Index, to be allocated by the Controller to counties and deposited in each county's SLESF in the same ratios authorized under paragraph (1) of subdivision (b) of Section 30061 for juvenile facility repair and renovation, juvenile deferred entry of judgment programs, and intensified juvenile or young adult (under age 25) probation supervision.

#### SEC. 5. PROTECTION AND SUPPORT FOR VICTIMS

SEC. 5.1. Section 240 of the Evidence Code is amended to read:

240. (a) Except as otherwise provided in subdivision (b), "unavailable as a witness" means that the declarant is any of the following:

(1) Exempted or precluded on the ground of privilege from testifying concerning the matter to which his or her statement is relevant.

(2) Disqualified from testifying to the matter.

(3) Dead or unable to attend or to testify at the hearing because of then existing physical or mental illness or infirmity.

(4) Absent from the hearing and the court is unable to compel his or her attendance by its process.

(5) Absent from the hearing and the proponent of his or her statement has exercised reasonable diligence but has been unable to procure his or her attendance by the court's process.

(6) The declarant is present at the hearing and refuses to testify concerning the subject matter of the declarant's statement despite an order from the court to do so.

(b) A declarant is not unavailable as a witness if the exemption, preclusion, disqualification, death, inability, or absence of the declarant was brought about by the procurement or wrongdoing of the proponent of his or her statement for the purpose of preventing the declarant from attending or testifying.

(c) Expert testimony which that establishes that physical or mental trauma resulting from an alleged crime has caused harm to a witness of sufficient severity that the witness is physically unable to testify or is unable to testify without suffering substantial trauma may constitute a sufficient showing of unavailability pursuant to paragraph (3) of subdivision (a). As used in this section, the term "expert" means a physician and surgeon, including a psychiatrist, or any person described by subdivision (b), (c), or (e) of Section 1010.

The introduction of evidence to establish the unavailability of a witness under this subdivision shall not be deemed procurement of unavailability, in absence of proof to the contrary.

SEC. 5.2. Section 1390 is added to the Evidence Code, to read:

1390. (a) Evidence of a statement is not made inadmissible by the hearsay rule if the statement is offered against a party who has engaged or acquiesced in intentional criminal wrongdoing that has caused the unavailability of the declarant as a witness.

(b) (1) The party seeking to introduce a statement pursuant to subdivision (a) shall establish, by a preponderance of the evidence, that the elements of subdivision (a) have been met at a foundational hearing.

(2) Hearsay evidence, including the hearsay evidence that is the subject of the foundational hearing, is admissible at the foundational hearing. However, a finding that the elements of subdivision (a) have been met shall not be based solely on the uncontroverted hearsay statement of the unavailable declarant, and shall be supported by independent corroborative evidence.

(3) The foundational hearing shall be conducted outside the presence of the jury. However, if the hearing is conducted after a jury trial has begun, the judge presiding at the hearing may consider evidence already presented to the

jury in deciding whether the elements of subdivision (a) have been met.

(c) If a statement to be admitted pursuant to this section includes a hearsay statement made by anyone other than the declarant who is unavailable pursuant to subdivision (a), that other hearsay statement is inadmissible unless it meets the requirements of an exception to the hearsay rule.

SEC. 5.3. Section 13921.5 is added to the Government Code, to read:

13921.5. (a) There is hereby established the Crimestopper Reward Reimbursement Fund, to be administered by the board.

(b) Allocations from the Crimestopper Reward Reimbursement Fund shall be used to provide reimbursement for rewards offered and paid for information in felony cases.

(c) Reimbursement in amounts not to exceed five thousand dollars (\$5,000) per claim may be paid to eligible claimants but shall not exceed the actual reward paid.

(d) Reward reimbursement claims shall be paid upon proof that the underlying reward was offered and paid for evidence that actually led to arrest or conviction verified by the arresting or prosecuting agency.

(e) Qualified claimants for reimbursement include the victim of the underlying felony or his or her family, or a charitable or nonprofit organization.

(f) The board may set reward limits below the maximum, may set discrete limits for different crime classifications, may increase the class of eligible claimants, and shall post its claim procedures and forms on its Web site.

(g) The Controller shall transfer ten million dollars (\$10,000,000) from the General Fund to the Crimestopper Reward Reimbursement Fund for the 2009–10 fiscal year.

(h) The Crimestopper Reward Reimbursement Fund shall be annually augmented by the Controller so that the fund has available the amount of ten million dollars (\$10,000,000), adjusted for cost of living annually according to the California Consumer Price Index.

(i) Nothing in this section shall be deemed to preclude or otherwise interfere with the Governor's power to offer rewards pursuant to Section 1547 of the Penal Code.

SEC. 5.4. Section 13974.6 is added to the Government Code, to read:

13974.6. (a) The Victim Trauma Recovery Fund is hereby created for the purpose of supporting victim recovery, resource, and treatment programs to provide comprehensive recovery services to victims of crime.

(b) The board shall select up to five sites to award grants pursuant to this section. The sites shall include, but need not be limited to, all of the following programmatic components:

(1) Establishment of a victim recovery, resource, and treatment center.

(2) Implementation of a crime scene mobile outreach team to provide comprehensive intervention and debriefing for children and families.

(3) Community-based outreach.

(4) Services to family members and loved ones of homicide victims.

(c) Victim recovery, resource, and treatment programs selected by the board shall serve populations of crime victims whose needs are not currently being met, shall be distributed geographically to serve the state's population, and shall include services to all of the following:

(1) Individuals who are not aware of the breadth and range of services provided to victims of crime.

(2) Individuals residing in communities with limited services.

(3) Individuals who cannot access services due to disability.

(4) Family members and loved ones of homicide victims.

(d) The board shall award those grants beginning on July 1, 2009.

(e) The board may retain up to 5 percent of those funds for the purposes of administering those grants.

SEC. 5.5. Section 136.1 of the Penal Code is amended to read:

136.1. (a) Except as provided in subdivision (c), any person who does any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:

(1) Knowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(2) Knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(3) For purposes of this section, evidence that the defendant was a family member who interceded in an effort to protect the witness or victim shall create a presumption that the act was without malice.

(b) Except as provided in subdivision (c), every person who attempts to

prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:

(1) Making any report of that victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge.

(2) Causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof.

(3) Arresting or causing or seeking the arrest of any person in connection with that victimization.

(c) Every person doing any of the acts described in subdivision (a) or (b) knowingly and maliciously under any one or more of the following circumstances, is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years under any of the following circumstances:

(1) Where the act is accompanied by force or by an express or implied threat of force or violence, upon a witness or victim or any third person or the property of any victim, witness, or any third person.

(2) Where the act is in furtherance of a conspiracy.

(3) Where the act is committed by any person who has been convicted of any violation of this section, any predecessor law hereto or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation of this section.

(4) Where the act is committed by any person for pecuniary gain or for any other consideration acting upon the request of any other person. All parties to such a transaction are guilty of a felony.

(d) Any person who, by means of force or by express or implied threat of force or violence, attempts to prevent or dissuade a judge, juror, prosecutor, public defender, or peace officer from participating in the arrest, prosecution, trial, or impartial judgment of any criminal suspect is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years.

(e) Any person who, by means of force or by express or implied threat of force or violence, attempts to prevent or dissuade any person from filing, authorizing, or implementing a gang injunction or nuisance abatement process in response to gang, drug, or other organized criminal activity, or from inspecting premises where such activities occur, shall be guilty of a felony punishable by imprisonment in the state prison for two, three, or four years.

(f) Any person who, by means of force or by express or implied threat of force or violence, attempts to retaliate against any person who lawfully participated in any criminal or civil process protected pursuant to subdivision (a), (b), (d), or (e) shall be guilty of a felony punishable by imprisonment in the state prison for two, three, or four years.

(g) Every person attempting the commission of any act described in subdivisions (a), (b), and (c), and (d) is guilty of the offense attempted without regard to success or failure of the attempt. The fact that no person was injured physically, or in fact intimidated, shall be no defense against any prosecution under this section.

(h) Nothing in this section precludes the imposition of an enhancement for great bodily injury where the injury inflicted is significant or substantial.

(i) The use of force during the commission of any offense described in subdivision (c) shall be considered a circumstance in aggravation of the crime in imposing a term of imprisonment under subdivision (b) of Section 1170.

SEC. 5.6. Section 11166.6 is added to the Penal Code, to read:

11166.6. (a) Each county may establish child advocacy centers to coordinate the activities of the various agencies involved in the investigation and prosecution of alleged child abuse, including those that provide medical services and follow-up treatment to victims of child abuse. The purpose of these centers is to protect victims of child abuse by minimizing traumatizing interviews through the coordination of efforts of district attorneys, child welfare social workers, law enforcement, and medical personnel, among others, and to assist prosecution by reducing the chances of conflicting or inaccurate information by asking age-appropriate questions to help procure information that is admissible in court.

(b) (1) Member agencies of the child advocacy center shall, at a minimum, consist of a representative from the district attorney's office, the sheriff's department, a police department, and child protective services, and may include medical and mental health professionals.

(2) Members of the local child advocacy center shall be trained to conduct child forensic interviews. The training shall include instruction in risk assessment, the dynamics of child abuse, including the abuse of children with special needs, child sexual abuse and rape of children, and legally sound and

age-appropriate interview and investigation techniques.

(c) The Child Advocacy Center Fund is hereby created for the purpose of supporting child advocacy centers. Money appropriated from the fund shall be made available through the Office of Emergency Services to any public or private nonprofit agency for the establishment or maintenance, or both, of child advocacy centers that provide comprehensive child advocacy services, as specified in this section.

SEC. 5.7. Section 1464 of the Penal Code is amended to read:

1464. (a) (1) The people of the State of California find and declare that street crime, through its prevalence and brutality, creates numerous victims who require support and services that are best obtained from experienced providers. Further, because the funds allocated to the Driver Training Penalty Assessment Fund are no longer used for their original purpose, it is appropriate to redirect those funds, which are generated by criminal penalty assessments, to victim services and law enforcement training programs.

(2) Subject to Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, and except as otherwise provided in this section, there shall be levied a state penalty in the amount of ten dollars (\$10) for every ten dollars (\$10), or part of ten dollars (\$10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses, except parking offenses as defined in subdivision (i) of Section 1463, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code.

(2) (3) Any bail schedule adopted pursuant to Section 1269b or bail schedule adopted by the Judicial Council pursuant to Section 40310 of the Vehicle Code may include the necessary amount to pay the penalties established by this section and Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, and the surcharge authorized by Section 1465.7, for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(3) (4) The penalty imposed by this section does not apply to the following:

(A) Any restitution fine.

(B) Any penalty authorized by Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code.

(C) Any parking offense subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

(D) The state surcharge authorized by Section 1465.7.

(b) Where multiple offenses are involved, the state penalty shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the state penalty shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making the deposit shall also deposit a sufficient amount to include the state penalty prescribed by this section for forfeited bail. If bail is returned, the state penalty paid thereon pursuant to this section shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the state penalty, the payment of which would work a hardship on the person convicted or his or her immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the penalty and transmit it to the county treasury. The portion thereof attributable to Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code shall be deposited in the appropriate county fund and 70 percent of the balance shall then be transmitted to the State Treasury, to be deposited in the State Penalty Fund, which is hereby created, and 30 percent to remain on deposit in the county general fund. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited in the State Penalty Fund shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.33 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month, except that the total amount shall not be less than the state penalty levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. These moneys shall be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Restitution Fund an amount equal to ~~32.02~~ 30.21 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month. Those funds shall be made

available in accordance with Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to ~~23.99~~ *32.44* percent of the state penalty funds deposited in the State Penalty Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to ~~25.70~~ *0.67* percent of the state penalty funds deposited in the State Penalty Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to ~~7.88~~ *13.80* percent of the state penalty funds deposited in the State Penalty Fund during the preceding month. Money in the Corrections Training Fund is not continuously appropriated and shall be appropriated in the Budget Act.

(6) Once a month there shall be transferred into the Local Public Prosecutors and Public Defenders Training Fund established pursuant to Section 11503 an amount equal to ~~0.78~~ *1.25* percent of the state penalty funds deposited in the State Penalty Fund during the preceding month. ~~The amount so transferred shall not exceed the sum of eight hundred fifty thousand dollars (\$850,000) in any fiscal year. The remainder in excess of eight hundred fifty thousand dollars (\$850,000) shall be transferred to the Restitution Fund.~~

(7) Once a month there shall be transferred into the Victim-Witness Assistance Fund an amount equal to ~~8.64~~ *16.94* percent of the state penalty funds deposited in the State Penalty Fund during the preceding month.

(8) (A) Once a month there shall be transferred into the Traumatic Brain Injury Fund, created pursuant to Section 4358 of the Welfare and Institutions Code, an amount equal to 0.66 percent of the state penalty funds deposited into the State Penalty Fund during the preceding month. However, the amount of funds transferred into the Traumatic Brain Injury Fund for the 1996–97 fiscal year shall not exceed the amount of five hundred thousand dollars (\$500,000). Thereafter, funds shall be transferred pursuant to the requirements of this section. Notwithstanding any other provision of law, the funds transferred into the Traumatic Brain Injury Fund for the 1997–98, 1998–99, and 1999–2000 fiscal years, may be expended by the State Department of Mental Health, in the current fiscal year or a subsequent fiscal year, to provide additional funding to the existing projects funded by the Traumatic Brain Injury Fund, to support new projects, or to do both.

(B) Any moneys deposited in the State Penalty Fund attributable to the assessments made pursuant to subdivision (i) of Section 27315 of the Vehicle Code on or after the date that Chapter 6.6 (commencing with Section 5564) of Part 1 of Division 5 of the Welfare and Institutions Code is repealed shall be utilized in accordance with paragraphs (1) to (8), inclusive, of this subdivision.

(9) *Once a month there shall be transferred into the Victim Trauma Recovery Fund created pursuant to subdivision (a) of Section 13974.6 of the Government Code an amount equal to 1.81 percent of the state penalty funds deposited into the State Penalty Fund during the preceding month.*

(10) *Once a month there shall be transferred into the Child Advocacy Center Fund created pursuant to subdivision (c) of Section 11166.6 an amount equal to 1.89 percent of the state penalty funds deposited into the State Penalty Fund during the preceding month.*

SEC. 5.8. Section 14027 of the Penal Code is amended to read:

14027. The Attorney General shall issue appropriate guidelines and may adopt regulations to implement this title. These guidelines shall include:

(a) A process whereby state and local agencies shall apply for reimbursement of the costs of providing witness protection services.

(b) ~~A 25-percent~~ *An appropriate level for the match that shall be required of made by local agencies.* The Attorney General may also establish a process through which to waive the required local match when appropriate.

SEC. 6. GANG AND STREET CRIME PENALTIES

SEC. 6.1. Section 594 of the Penal Code is amended to read:

594. (a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, furnishings, or property belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is four hundred

dollars (\$400) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars (\$10,000), or if the amount of defacement, damage, or destruction is ten thousand dollars (\$10,000) or more, by a fine of not more than fifty thousand dollars (\$50,000), or by both that fine and imprisonment.

(2) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars (\$400), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment.

(B) If the amount of defacement, damage, or destruction is less than four hundred dollars (\$400), and the defendant has been previously convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment.

(3) *More than one act of vandalism committed in any consecutive 12-month period may be aggregated for the purposes of paragraphs (1) and (2), if the vandalism was the result of a common scheme, purpose, or plan.*

(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine, or any part thereof, by the parent upon a finding of good cause.

(e) As used in this section, the term "graffiti or other inscribed material" includes any unauthorized inscription, word, figure, mark, or design, that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) The court may order any person ordered to perform community service or graffiti removal pursuant to paragraph (1) of subdivision (c) to undergo counseling.

~~(g) This section shall become operative on January 1, 2002.~~

SEC. 6.2. Section 10851 of the Vehicle Code is amended to read:

10851. (a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in a county jail for not more than one year or in the state prison or by a fine of not more than five thousand dollars (\$5,000), or by both the fine and imprisonment.

(b) If the vehicle is (1) an ambulance, as defined in subdivision (a) of Section 165, (2) a distinctively marked vehicle of a law enforcement agency or fire department, ~~taken while the ambulance or vehicle is on an emergency call and this fact is known to the person driving or taking, or any person who is party or an accessory to or an accomplice in the driving or unauthorized taking or stealing,~~ or (3) a vehicle which has been modified for the use of a disabled veteran or any other disabled person and which displays a distinguishing license plate or placard issued pursuant to Section 22511.5 or 22511.9 and this fact is known or should reasonably have been known to the person driving or taking, or any person who is party or an accessory in the driving or unauthorized taking or stealing, the offense is a felony punishable by imprisonment in the state prison for two, three, or four years or by a fine of not more than ten thousand dollars (\$10,000), or by both the fine and imprisonment.

(c) In any prosecution for a violation of subdivision (a) or (b), the consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person.

(d) The existence of any fact which makes subdivision (b) applicable shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the *trier of fact* ~~jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.~~



(e) Any person who has been convicted of one or more previous felony violations of this section, or felony grand theft of a vehicle in violation of subdivision (d) of Section 487 of the Penal Code, former subdivision (3) of Section 487 of the Penal Code, as that section read prior to being amended by Section 4 of Chapter 1125 of the Statutes of 1993, or Section 487h of the Penal Code, is punishable as set forth in Section 666.5 of the Penal Code. The existence of any fact that would bring a person under subdivision (f), (g), (h), (i), or (j), or Section 666.5 of the Penal Code shall be alleged in the information or indictment accusatory pleading and either admitted by the defendant in open court, or found to be true by the trier of fact jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere, or by trial by the court sitting without a jury.

(f) This section shall become operative on January 1, 1997.

(f) A person who violates subdivision (a) as a principal or accessory to the taking of a vehicle in exchange for consideration or for the purpose of sale or transport of the vehicle or its components, in addition to other penalties prescribed by law, is subject to an additional one year imprisonment in the state prison.

(g) A person who violates subdivision (a) as a principal or accessory to the taking of a vehicle that, prior to its recovery, is used in the commission of an offense that is a felony, in addition to other penalties prescribed by law is subject to an additional one year imprisonment in the state prison.

(h) A person who violates subdivision (a) as a principal or accessory to the taking of a vehicle and with intent to use the vehicle in the commission of a felony, in addition to other penalties prescribed by law is subject to an additional one year imprisonment in the state prison.

(i) A person who commits a felony violation of subdivision (a) as a principal or accessory to the taking of a vehicle that, prior to its recovery, is the subject of a pursuit in violation of Sections 2800.1, 2800.2, 2800.3, or 2800.4, in addition to other penalties prescribed by law is subject to an additional one year imprisonment in the state prison.

(j) A person who violates subdivision (a) as a principal or accessory to the taking of a vehicle that, prior to its recovery, is involved in a collision, in addition to other penalties prescribed by law, is subject to an additional one year imprisonment in the state prison and an additional and consecutive one year imprisonment in the state prison for each person, other than an accessory, who suffers personal injury as a proximate cause of that collision.

SEC. 6.3. Section 666.5 of the Penal Code is amended to read:

666.5. (a) Every A person who, having been previously convicted of a felony violation of Section 10851 of the Vehicle Code, or felony grand theft involving an automobile in violation of subdivision (d) of Section 487 or former subdivision (3) of Section 487, as that section read prior to being amended by Section 4 of Chapter 1125 of the Statutes of 1993, or felony grand theft involving a motor vehicle, as defined in Section 415 of the Vehicle Code, a trailer, as defined in Section 630 of the Vehicle Code, any special construction equipment, as defined in Section 565 of the Vehicle Code, or a vessel, as defined in Section 21 of the Harbors and Navigation Code in violation of former Section 487h, or a felony violation of Section 496d regardless of whether or not the person actually served a prior prison term for those offenses, is subsequently convicted of any of these offenses shall be punished by imprisonment in the state prison for two, three, or four years, or a fine of ten thousand dollars (\$10,000), or both the fine and the imprisonment.

(b) For the purposes of this section, the terms "special construction equipment" and "vessel" are limited to motorized vehicles and vessels.

(c) The existence of any fact which would bring a person under subdivision (a) shall be alleged in the accusatory pleading information or indictment and either admitted by the defendant in open court, or found to be true by the trier of fact jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(d) A person who is subject to punishment under this section, having previously been convicted of two or more of the offenses enumerated in subdivision (a), may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this subdivision, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 6.4. Section 707.005 is added to the Welfare and Institutions Code, to read:

707.005. For purposes of subdivision (b) of Section 707, with regard to a minor, in any case in which the minor is alleged to be a person described in Section 602, when he or she was 14 years of age or older, by reason of a felony violation of Section 186.22 of the Penal Code, the minor shall be presumed to

be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon the evidence, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court, applying the criteria and subject to the procedures described in subdivision (b) of Section 707. If the minor is dealt with under the juvenile court law, he or she is eligible for commitment to the Department of Corrections and Rehabilitation's Division of Juvenile Facilities, notwithstanding Sections 731 and 731.1.

SEC. 6.5. Section 32 of the Penal Code is amended to read:

32. (a) Every person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony.

(b) Any person who knowingly makes a materially false statement to a peace officer or prosecutor regarding facts relevant to investigation of a felony committed for the benefit of, at the direction of, or in association with a criminal street gang as described in Section 186.22, or a violent felony as described in subdivision (c) of Section 667.5, shall be an accessory to that felony if all of the following are true:

(1) Prior to making the false statement the person was not a principal or accessory to the felony.

(2) The statement was made with the intent that the principal may avoid or escape arrest, trial, conviction, or punishment.

(3) The person either had knowledge that said principal had committed such felony or the principal is convicted of the underlying felony.

(c) The provisions of subdivision (b) shall not be construed to limit prosecution for making false statements under any other provision of law.

SEC. 6.6. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraphs (4) and (5), any person who is convicted of commits a felony or attempted felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional and consecutive term of imprisonment in the state prison as follows:

(A) Except as provided in subparagraphs (B) and (C), the person shall be punished by an additional term of two, three, or four years at the court's discretion.

(B) If the felony is a serious felony, as defined in subdivision (c) of Section 1192.7, the person shall be punished by an additional term of five years.

(C) If the felony is a violent felony, as defined in subdivision (c) of Section 667.5, the person shall be punished by an additional term of 10 years.

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility, that fact shall be a circumstance in aggravation of the crime in imposing a term under paragraph (1).

(3) The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentencing enhancements on the record at the time of the sentencing.

(4) Any person who is convicted of commits a felony enumerated in this paragraph committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced to an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of in addition to any other enhancements or punishment provisions that may apply, be punished as follows:

(A) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 3046, if the felony is any of the offenses enumerated in

subparagraph (B) or (C) of this paragraph:

(B) ~~Imprisonment~~ *By imprisonment* in the state prison for 15 years to life, if the felony is a home invasion robbery, in violation of subparagraph (A) of paragraph (1) of subdivision (a) of Section 213; carjacking, as defined in Section 215; a felony violation of Section 246; or a *felony* violation of Section ~~2022.55~~ 12034.

(C) ~~Imprisonment~~ *(B) By imprisonment* in the state prison for ~~seven years~~ life, if the felony is extortion, as defined in Section 519; or threats to victims, ~~and witnesses, judges, jurors, prosecutors, public defenders, or peace officers,~~ as defined in Section 136.1.

(5) (A) Except as provided in paragraph (4) *and subparagraph (B)*, any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(B) *For any felony described in subparagraph (A), if the punishment provided in paragraph (1) of this subdivision would result in a longer term of imprisonment, then it shall apply instead of the punishment provided in subparagraph (A).*

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Any person who ~~is convicted of~~ *commits* a public offense punishable as a felony or a misdemeanor, ~~which is committed~~ for the benefit of, at the direction of or in association with, any criminal street gang with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(8) The intimidation *or threatening* of witnesses, ~~and~~ victims, *judges, jurors, prosecutors, public defenders, or peace officers,* as defined in Section 136.1.

(9) Grand theft, as defined in subdivision (a) or (c) of Section 487.

(10) Grand theft of any firearm, vehicle, trailer, or vessel.

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

(14) Money laundering, as defined in Section 186.10.

(15) Kidnapping, as defined in Section 207.

(16) Mayhem, as defined in Section 203.

(17) Aggravated mayhem, as defined in Section 205.

(18) Torture, as defined in Section 206.

(19) Felony extortion, as defined in Sections 518 and 520.

(20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of

Section 594.

(21) Carjacking, as defined in Section 215.

(22) The sale, delivery, or transfer of a firearm, as defined in Section 12072.

(23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101.

(24) Threats to commit crimes resulting in death or great bodily injury, as defined in Section 422.

(25) Theft and unlawful taking or driving of a vehicle, as defined in Section 10851 of the Vehicle Code.

(26) Felony theft of an access card or account information, as defined in Section 484e.

(27) Counterfeiting, designing, using, attempting to use an access card, as defined in Section 484f.

(28) Felony fraudulent use of an access card or account information, as defined in Section 484g.

(29) Unlawful use of personal identifying information to obtain credit, goods, services, or medical information, as defined in Section 530.5.

(30) Wrongfully obtaining Department of Motor Vehicles documentation, as defined in Section 529.7.

(31) Prohibited possession of a firearm in violation of Section 12021.

(32) Carrying a concealed firearm in violation of Section 12025.

(33) Carrying a loaded firearm in violation of Section 12031.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) ~~Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or~~ *The court may* refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(h) Notwithstanding any other provision of law, for each person committed to the Division of Juvenile Facilities for a conviction pursuant to subdivision (a) or (b) of this section, the offense shall be deemed one for which the state shall pay the rate of 100 percent of the per capita institutional cost of the Division of Juvenile Facilities, pursuant to Section 912.5 of the Welfare and Institutions Code.

(i) In order to secure a conviction or sustain a juvenile petition, pursuant to subdivision (a) it is not necessary for the prosecution to prove that the person devotes all, or a substantial part, of his or her time or efforts to the criminal street gang, nor is it necessary to prove that the person is a member of the criminal street gang. Active participation in the criminal street gang is all that is required.

(j) A pattern of gang activity may be shown by the commission of one or more of the offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), and the commission of one or more of the offenses enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive of subdivision (e). A pattern of gang activity cannot be established solely by proof of commission of offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), alone.

(k) (1) *Notwithstanding paragraph (4) of subdivision (a) of Section 166, any willful and knowing violation of any injunction issued pursuant to Section 3479 of the Civil Code against a criminal street gang, as defined in this section, or its individual members, shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.*

(2) *A second violation of any order described in paragraph (1) occurring within seven years of a prior violation of any of those orders is punishable by imprisonment in a county jail for not less than 90 days and not more than one year.*

(3) *A third or subsequent violation of any order described in paragraph (1) occurring within seven years of the prior violation of any of those orders shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a*



period not to exceed one year, but not less than 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in the county jail.

(4) The penalties in this subdivision shall apply unless a greater penalty is authorized by subdivision (d) or any other provision or provisions of law.

(l) Any person found guilty as an accessory to a felony, within the meaning of Section 32, shall be subject to one-half the punishment prescribed for a principal in such felony if it is pled and proved that the felony was committed for the benefit of, at the direction of, or in association with any criminal street gang unless a greater penalty is authorized by any other provision or provisions of law.

SEC. 6.7. Section 186.22a of the Penal Code is amended to read:

186.22a. (a) Every building or place used by members of a criminal street gang for the purpose of the commission of the offenses listed in subdivision (e) of Section 186.22 or any offense involving dangerous or deadly weapons, burglary, or rape, and every building or place wherein or upon which that criminal conduct by gang members takes place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

(b) Any action for injunction or abatement filed pursuant to subdivision (a), including an action filed by the Attorney General, shall proceed according to the provisions of Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, ~~except that all of the following shall apply:~~

(1) The court shall not assess a civil penalty against any person unless that person knew or should have known of the unlawful acts.

(2) No order of eviction or closure may be entered.

(3) All injunctions issued shall be limited to those necessary to protect the health and safety of the residents or the public or those necessary to prevent further criminal activity.

(4) ~~Suit may not be filed until 30-day notice of the unlawful use or criminal conduct has been provided to the owner by mail, return receipt requested, postage prepaid, to the last known address.~~

(c) Whenever an injunction is issued pursuant to subdivision (a), or Section 3479 of the Civil Code, to abate gang activity constituting a nuisance, the Attorney General or any district attorney or any prosecuting city attorney may maintain an action for money damages on behalf of the community or neighborhood injured by that nuisance. Any money damages awarded shall be paid by or collected from assets of the criminal street gang or its members. Only members of the criminal street gang who created, maintained, or contributed to the creation or maintenance of the nuisance shall be personally liable for the payment of the damages awarded. In a civil action for damages brought pursuant to this subdivision, the Attorney General, district attorney, or city attorney may use, but is not limited to the use of, the testimony of experts to establish damages suffered by the community or neighborhood injured by the nuisance. The damages recovered pursuant to this subdivision shall be deposited into a separate segregated fund for payment to the governing body of the city or county in whose political subdivision the community or neighborhood is located, and that governing body shall use those assets solely for the benefit of the community or neighborhood that has been injured by the nuisance.

(d) No nonprofit or charitable organization which is conducting its affairs with ordinary care or skill, and no governmental entity, shall be abated pursuant to subdivisions (a) and (b).

(e) Nothing in this chapter shall preclude any aggrieved person from seeking any other remedy provided by law.

(f) (1) Any firearm, ammunition which may be used with the firearm, or any deadly or dangerous weapon which is owned or possessed by a member of a criminal street gang for the purpose of the commission of any of the offenses listed in subdivision (e) of Section 186.22, or the commission of any burglary or rape, may be confiscated by any law enforcement agency or peace officer.

(2) In those cases where a law enforcement agency believes that the return of the firearm, ammunition, or deadly weapon confiscated pursuant to this subdivision, is or will be used in criminal street gang activity or that the return of the item would be likely to result in endangering the safety of others, the law enforcement agency shall initiate a petition in the superior court to determine if the item confiscated should be returned or declared a nuisance.

(3) No firearm, ammunition, or deadly weapon shall be sold or destroyed unless reasonable notice is given to its lawful owner if his or her identity and address can be reasonably ascertained. The law enforcement agency shall inform the lawful owner, at that person's last known address by registered

mail, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing and that the failure to respond shall result in a default order forfeiting the confiscated firearm, ammunition, or deadly weapon as a nuisance.

(4) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing.

(5) At the hearing, the burden of proof is upon the law enforcement agency or peace officer to show by a preponderance of the evidence that the seized item is or will be used in criminal street gang activity or that return of the item would be likely to result in endangering the safety of others. All returns of firearms shall be subject to Section 12021.3.

(6) If the person does not request a hearing within 30 days of the notice or the lawful owner cannot be ascertained, the law enforcement agency may file a petition that the confiscated firearm, ammunition, or deadly weapon be declared a nuisance. If the items are declared to be a nuisance, the law enforcement agency shall dispose of the items as provided in Section 12028.

SEC. 6.8. Section 186.22b is added to the Penal Code, to read:

186.22b. (a) A criminal street gang may be sued in the name it has assumed or by which it is known.

(b) Delivery by hand of a copy of any process against the criminal street gang to any natural person designated by it as agent for service of process shall constitute valid service on the criminal street gang. If designation of an agent for the purpose of service has not been made, or if the agent cannot with reasonable diligence be found, the court or judge shall make an order that service be made upon the criminal street gang by delivery by hand of a copy of the process to three or more members of the criminal street gang designated in the order who actively participate in the criminal street gang. The court may, in its discretion, order, in addition to the foregoing, that a summons be served in any manner that is reasonably calculated to give actual notice to the criminal street gang. Service in the manner ordered pursuant to this section shall constitute valid service on the criminal street gang.

SEC. 6.9. Section 186.26 of the Penal Code is amended to read:

186.26. (a) Any person who solicits or recruits another to actively participate in a criminal street gang, as defined in subdivision (f) of Section 186.22, with the intent that the person solicited or recruited ~~actively participate in the criminal street gang participate in a pattern of criminal street gang activity, as defined in subdivision (e) of Section 186.22,~~ or with the intent that the person solicited or recruited promote, further, or assist in any felonious conduct by members of the criminal street gang, shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(b) Any person who threatens another person with physical violence on two or more separate occasions within any 30-day period with the intent to coerce, induce, or solicit any person to actively participate in a criminal street gang, as defined in subdivision (f) of Section 186.22, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) Any person who uses physical violence to coerce, induce, or solicit another person to actively participate in any criminal street gang, as defined in subdivision (f) of Section 186.22, or to prevent the person from leaving a criminal street gang, shall be punished by imprisonment in the state prison for three, four, or five years.

(d) If the person solicited, recruited, coerced, or threatened pursuant to subdivision (a), (b), or (c) is a minor, an additional term of three years shall be imposed in addition and consecutive to the penalty prescribed for a violation of any of these subdivisions.

(e) If the person solicited, recruited, coerced, or threatened pursuant to subdivision (a), (b), or (c) is a minor under the age of 14, an additional term of five years shall be imposed in addition and consecutive to the penalty prescribed for a violation of any of these subdivisions.

(f) Any person who violates subdivision (b) or (c) shall be a principal to any subsequent felony committed by the subject of his or her solicitation, recruitment, coercion, or threat in the event that:

(1) The subject commits a felony for the benefit of, at the direction of, or in association with the criminal street gang, and

(2) The felony occurs within one year of the last act constituting a violation of this section.

(e) (g) Nothing in this section shall be construed to limit prosecution under any other provision of law.

SEC. 6.10. Section 186.30 of the Penal Code is amended to read:

186.30. (a) (1) Any person described in subdivision (b) shall register with the chief of police of the city in which he or she resides, or the sheriff of the

county if he or she resides in an unincorporated area or a city that has no police department, within 10 days of release from custody or within 10 days of his or her arrival in any city, county, or city and county to reside there, whichever occurs first, and annually thereafter, and upon changing residence.

(2) If the person who is registering has more than one residential address at which he or she regularly resides, he or she shall register in each of the jurisdictions in which he or she regularly resides, in accordance with paragraph (1), regardless of the number of days or nights spent there. If all of the addresses are within the same jurisdiction, the person shall provide the registering authority with all of the addresses where he or she regularly resides.

(b) Subdivision (a) shall apply to any person convicted in a criminal court or who has had a petition sustained in a juvenile court in this state for any of the following offenses:

(1) Subdivision (a) of Section 186.22.

(2) Any crime where the enhancement specified in subdivision (b) of Section 186.22 is found to be true.

(3) Any crime that the court finds is gang related at the time of sentencing or disposition.

(c) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years. If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serves at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(d) For the purposes of this section and Section 186.32, imposition of the requirement to register shall be effective on the day the registrant is sentenced or on the day of disposition in the juvenile court unless he or she is in custody, in which case the requirement to register shall become effective upon the registrant's release from custody.

(e) The registration requirement shall terminate five years after the date it becomes effective unless the registrant is subsequently incarcerated in which case the court may toll the registration requirement or reimpose gang registration as a condition upon release from custody.

SEC. 6.11. Section 186.34 is added to the Penal Code, to read:

186.34. Beginning no later than July 1, 2009, the Department of Justice shall, on a monthly basis, search all disposition data submitted by California criminal justice agencies for all persons who have been convicted or adjudicated of a violation of subdivision (a) of Section 186.22 or as to whom a sentencing allegation has been found true pursuant to subdivision (b) of Section 186.22. The department shall make information regarding these persons electronically available only to California criminal justice agencies on a secured Gang Registry department site. The information shall include the person's full name, date of birth, and, as to each conviction or adjudication, the detaining agency, arresting, or booking agency, to the extent this information is available from the disposition data submitted to the department.

SEC. 6.12. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison provided however, that every person who possesses any controlled substance that is specified in

paragraph (2) of subdivision (d) of Section 11055 shall be punished by imprisonment in the state prison.

(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 6.13. Section 11378 of the Health and Safety Code is amended to read:

11378. Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale any controlled substance which is (a) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) (b) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) (c) specified in paragraph (11) of subdivision (c) of Section 11056, (4) (d) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) (e) specified in subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055, shall be punished by imprisonment in the state prison, provided however, that every person who possesses for sale any controlled substance that is specified in paragraph (2) of subdivision (d) of Section 11055 shall be punished by imprisonment in the state prison for two, three, or four years.

SEC. 6.14. Section 11379 of the Health and Safety Code is amended to read:

11379. (a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in the state prison for a period of two, three, or four years, provided however, that every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance that is specified in paragraph (2) of subdivision (d) of Section 11055 shall be punished by three, four, or five years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment in the state prison for three, six, or nine years.

SEC. 6.15. Section 12022.52 is added to the Penal Code, to read:

12022.52. (a) Notwithstanding any other provision of law, any person prohibited from possessing a firearm because of a previous felony conviction or juvenile adjudication, upon conviction for violation of Section 12025 or 12031, shall be punished by an additional 10 years in prison if either of the following circumstances is pled and proved:

(1) The offender was previously convicted of, or adjudicated to have committed, any of the following:

(A) A felony involving possession of a firearm, as described in Section 12021 or 12021.1.

(B) Manufacture, sale, possession for sale, or transport of a controlled substance amounting to a felony, as described in Division 10 (commencing with Section 11000) of the Health and Safety Code.

(C) A felony violation involving assault or battery of a peace officer, as described in Section 243 or 245.

(D) A violent felony, as described in subdivision (c) of Section 667.5.

(E) A felony gang offense that constitutes a violation of subdivision (a) or (b) of Section 186.22.

(F) Any felony in which it was pled and proved that the offender personally used a firearm.

(2) If, at the time of the offense that resulted in conviction for violation of Section 12025 or 12031, any of the following apply:

(A) The offender was on felony probation, parole, free on bail, awaiting sentencing, or subject to a felony arrest warrant.

(B) The offender was in felony possession of a controlled substance.

(C) The offender feloniously assaulted or battered a peace officer.

(b) This section shall not be construed to permit imposition of dual penalties based upon the same factual circumstances that support a penalty enhancement for assaulting a peace officer with a firearm imposed pursuant to Section 12022.53.

SEC. 6.16. Section 12022.53 of the Penal Code is amended to read:

12022.53. (a) This section applies to the following felonies:

(1) Section 187 (murder).

(2) Section 203 or 205 (mayhem).

(3) Section 207, 209, or 209.5 (kidnapping).

(4) Section 211 (robbery).

(5) Section 215 (carjacking).

(6) Section 220 (assault with intent to commit a specified felony).

(7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).

(8) Section 261 or 262 (rape).

(9) Section 264.1 (rape or sexual penetration in concert).

(10) Section 286 (sodomy).

(11) Section 288 or 288.5 (lewd act on a child).

(12) Section 288a (oral copulation).

(13) Section 289 (sexual penetration).

(14) Subdivision (a) of Section 460 (first-degree burglary).

(15) Section 4500 (assault by a life prisoner).

(16) Section 4501 (assault by a prisoner).

(17) Section 4503 (holding a hostage by a prisoner).

(18) Any felony punishable by death or imprisonment in the state prison for life.

(19) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), personally uses a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for 10 years. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), personally and intentionally discharges a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for 20 years.

(d) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 12034, personally and intentionally discharges a firearm and proximately causes great bodily injury, as defined in Section 12022.7, or death, to any person other than an accomplice, shall be punished by an additional and consecutive term of imprisonment in the state prison for 25 years to life.

(e) (f) The enhancements provided in this section shall apply to any person charged as who is a principal in the commission of an offense that includes an allegation pursuant to this section. ~~if both of the following are pled and proved:~~

(A) The person violated subdivision (b) of Section 186.22.

(B) Any principal in the offense committed any act specified in subdivision (b), (c), or (d):

(2) An enhancement for participation in a criminal street gang pursuant to Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1 shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.

(f) Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the

enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5, or 12022.55 shall not be imposed on a person in addition to an enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in Section 12022.7, 12022.8, or 12022.9 shall not be imposed on a person in addition to an enhancement imposed pursuant to subdivision (d).

(g) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(h) Notwithstanding Section 1385 or any other provision of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.

(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 or pursuant to Section 4019 or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment for that enhancement pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another enhancement provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(l) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

SEC. 6.17. Section 12022.57 is added to the Penal Code, to read:

12022.57. (a) In any case in which a person violates Section 12022.52 or commits a felony involving the use of a firearm and the offense occurs in whole or in part within a motor vehicle, or the firearm or the person and the firearm are found within a motor vehicle, the following conditions shall apply:

(1) If the subject motor vehicle is owned, driven, or controlled by the offender, in addition to any other applicable penalties, the Department of Motor Vehicles shall revoke the privilege of the offender to operate a motor vehicle pursuant to the procedures described in Section 13350 of the Vehicle Code.

(2) In the event the offender is incarcerated or subject to custodial treatment or house arrest as a consequence of the underlying offense, the revocation of the privilege to operate a motor vehicle described in paragraph (1) shall be tolled until his or her release from custody.

(3) If the subject vehicle is registered to the offender or other principal to the offense it may be impounded for up to 60 days.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a), or their agents, shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to the storage, in accordance with Section 22852 of the Vehicle Code.

SEC. 6.18. Section 2933.25 is added to the Penal Code, to read:

2933.25. (a) Notwithstanding any other provision of law, any person who is convicted of any felony offense that is punishable by imprisonment in the state prison for life shall be ineligible to receive any conduct credit reduction of his or her term of imprisonment pursuant to this chapter, Section 4019, or any other law providing for conduct credit reduction.

(b) As used in this section, life imprisonment includes all sentences for any crime or enhancement with a maximum term of life, whether with or without the possibility of parole, and whether with or without a specific minimum term or minimum period of confinement before eligibility for parole.

(c) This section shall apply only to offenses that are committed on or after the date that this section becomes operative.

SEC. 6.19. Section 653.75 of the Penal Code is amended to read:

653.75. Any person who commits any public offense while in custody in any local detention facility, as defined in Section 6031.4, or any state prison, as defined in Section 4504, is guilty of a crime. That crime shall be punished as

provided in the section prescribing the punishment for that public offense, or in Section 4505.

SEC. 6.20. Section 653.77 is added to the Penal Code, to read:

653.77. (a) Any person who willfully removes or disables an electronic, global positioning system (GPS), or other monitoring device affixed to his or her person, or the person of another, knowing that the device was affixed as a condition of a criminal sentence, juvenile court disposition, parole, or probation, is guilty of a public offense.

(b) (1) Any person subject to electronic, GPS, or other monitoring device based on a misdemeanor conviction, or based on a juvenile adjudication for a misdemeanor offense, who willfully violates subdivision (a) is guilty of a misdemeanor, punishable by imprisonment in a county jail for up to one year, by a fine of up to one thousand dollars (\$1,000), or by both that fine and imprisonment.

(2) Except as provided in subdivision (e), any person who willfully removes or disables an electronic, GPS, or other monitoring device affixed to another person where that device was affixed to the other person based upon a misdemeanor conviction, or based upon a juvenile adjudication for a misdemeanor offense, is guilty of a misdemeanor, punishable by imprisonment in a county jail for up to one year, by a fine of up to one thousand dollars (\$1,000), or by both that fine and imprisonment.

(c) (1) Any person subject to electronic, GPS, or other monitoring device based on a felony conviction, juvenile adjudication for a felony offense, or on parole for a felony offense, who willfully violates subdivision (a) is guilty of a felony, punishable by imprisonment in the state prison for 16 months, or two or three years.

(2) Except as provided in subdivision (e), any person who willfully removes or disables an electronic, GPS, or other monitoring device affixed to another person where that device was affixed to the other person based upon a felony conviction, or based upon a juvenile conviction for a felony offense, is guilty of a felony, punishable by imprisonment in the state prison for 16 months, or two or three years.

(d) Nothing in this section shall be construed to prevent punishment pursuant to any other provision of law that imposes a greater or more severe punishment, including, but not limited to, Section 594.

(e) This section shall not apply to the removal or disabling of an electronic, GPS, or other monitoring device by a physician, emergency medical services technician, or any other emergency response or medical personnel when doing so is necessary during the course of medical treatment of the person subject to the electronic, GPS, or other monitoring device. This section shall also not apply where the removal or disabling of the electronic, GPS, or other monitoring device is authorized, or required, by a court of law or by the law enforcement, probation, or parole authority or other entity responsible for placing the electronic, GPS, or other monitoring device upon the person or, at the time, has the authority and responsibility to monitor the electronic, GPS, or other monitoring device.

SEC. 6.21. Section 4504 of the Penal Code is amended to read:

4504. For purposes of this chapter:

(a) A person is deemed confined in a "state prison" if he or she is confined, by order made pursuant to law, in any of the prisons and institutions specified in Section 5003 by order made pursuant to law, including, but not limited to, commitments to under the jurisdiction of the Department of Corrections or the Department of the Youth Authority and Rehabilitation, regardless of the purpose of such the confinement and regardless of the validity of the order directing such the confinement, until a judgment of a competent court setting aside such the order becomes final.

(b) A person is deemed "confined in" a prison although, at the time of the offense, he or she is temporarily outside its walls or bounds for the purpose of serving on a work detail or for the purpose of confinement in a local correctional institution pending trial or for any other purpose for which a prisoner may be allowed temporarily outside the walls or bounds of the prison, but a prisoner who has been released on parole is not deemed "confined in" a prison for purposes of this chapter.

SEC. 6.22. Section 4505 is added to the Penal Code, to read:

4505. (a) Any inmate who commits a felony for the benefit of, at the direction of, or in association with, a criminal street gang, as defined in Section 186.22, shall be sentenced to twice the punishment that is otherwise prescribed for the felony, unless another provision of law would prescribe a greater penalty.

(b) Any person who provides an inmate with a weapon, cell phone, or other item of contraband that is used in a felony described in subdivision (a) shall be deemed a principal, as defined in Section 31, and be subject to the same

penalties as that inmate, even if the person does not specifically intend for the weapon, cell phone, or other item of contraband to be used in the commission of a crime.

## SEC. 7. INTENT REGARDING CONFLICTING PENALTIES

It is the intent of the people of the State of California in enacting this measure to strengthen and improve the laws that punish and control perpetrators of gang offenses, firearm offenses, and other specified crimes. It is also the intent of the people of the State of California that if any provision in this act conflicts with any other provision of law that provides for a greater penalty or longer period of imprisonment the latter provision shall apply.

## SEC. 8. INTENT REGARDING CHANGES TO THE STEP ACT

(a) The amendments to paragraph (4) of subdivision (b) of Section 186.22 of the Penal Code, to delete the alternative minimum term computations and to include enhancements in the computation of the term, are intended to improve that statute by simplifying the computation procedure for the minimum term of the life sentence. The amendments repealing the alternative minimum term computations in that statute shall not be given any retroactive application, and shall not be construed to benefit any person who committed a crime or received a punishment while those provisions were in effect.

(b) The amendments to subparagraph (B) of paragraph (4) of subdivision (b) of Section 186.22, to delete the reference to Section 12022.55 and the reference to add Section 12034, are intended to increase the punishment for gang offenses involving shooting from a vehicle. These amendments shall not be given any retroactive application, and shall not be construed to benefit any person who committed a crime or received a punishment while the former version of this provision was in effect.

(c) The amendment to subdivision (g) of Section 186.22, to delete the provision regarding the court striking the punishment for an enhancement, is not intended to affect the court's authority under Section 1385.

## SEC. 9. CONDITIONAL RELEASE AND REENTRY

SEC. 9.1. Section 667.21 is added to the Penal Code, to read:

667.21. (a) Notwithstanding any other law, no person charged with a violent felony described in subdivision (c) of Section 667.5 or a gang-related felony in violation of subdivision (a) or (b) of Section 186.22 shall be eligible for bail or be released on his or her own recognizance pending trial, if, at the time of the alleged offense, he or she was illegally within the United States. The sheriff of the county in which the subject is being held shall as soon as practical notify federal Immigration Criminal Enforcement (ICE) of the person's arrest and charges.

(b) This section shall not be construed to authorize the arrest of any person based solely upon his or her alien status or for violation of federal immigration laws.

(c) The sheriff, district attorney, and trial courts of each county shall record the status of any illegal alien charged, booked, or convicted of a felony, to be reported to the Department of Justice for inclusion in that person's criminal history (CLETS) so that reimbursement may be sought from the federal government for the cost of incarceration.

SEC. 9.2. Section 1319 of the Penal Code is amended to read:

1319. (a) No person arrested for a violent felony, as described in subdivision (c) of Section 667.5, or a serious felony, as described in subdivision (c) of Section 1192.7, may be released on his or her own recognizance until a hearing is held in open court before the magistrate or judge, and until the prosecuting attorney is given notice and a reasonable opportunity to be heard on the matter. In all cases, these provisions shall be implemented in a manner consistent with the defendant's right to be taken before a magistrate or judge without unreasonable delay pursuant to Section 825.

(b) A defendant charged with a violent felony, as described in subdivision (c) of Section 667.5, shall not be released on his or her own recognizance where it appears, by clear and convincing evidence, that he or she previously has been charged with a felony offense and has willfully and without excuse from the court failed to appear in court as required while that charge was pending. In all other cases, in making the determination as to whether or not to grant release under this section, the court shall consider all of the following:

(1) The existence of any outstanding felony warrants on the defendant.

(2) Any other information presented in the report prepared pursuant to Section 1318.1. The fact that the court has not received the report required by Section 1318.1, at the time of the hearing to decide whether to release the defendant on his or her own recognizance, shall not preclude that release.

(3) Any other information presented by the prosecuting attorney.

(c) The judge or magistrate who, pursuant to this section, grants or denies release on a person's own recognizance, within the time period prescribed in Section 825, shall state the reasons for that decision in the record. This

statement shall be included in the court's minutes. The report prepared by the investigative staff pursuant to subdivision (b) of Section 1318.1 shall be placed in the court file for that particular matter.

SEC. 9.3. Section 1319.5 of the Penal Code is amended to read:

1319.5. (a) No person described in subdivision (b) who is arrested for a new offense may be released on his or her own recognizance until a hearing is held in open court before the magistrate or judge.

(b) Subdivision (a) shall apply to the following:

(1) Any person who is currently on felony probation or felony parole.

(2) Any person who has failed to appear in court as ordered, resulting in a warrant being issued, three two or more times over the three years preceding the current arrest, except for infractions arising from violations of the Vehicle Code, and who is arrested for any of the following offenses:

(A) Any felony offense.

(B) Any violation of the California Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1).

(C) Any violation of Chapter 9 (commencing with Section 240) of Title 8 of Part 1 (assault and battery).

(D) A violation of Section 484 (theft).

(E) A violation of Section 459 (burglary).

(F) Any offense in which the defendant is alleged to have been armed with or to have personally used a firearm.

SEC. 9.4. Section 3044.5 is added to the Penal Code, to read:

3044.5. (a) The Division of Adult Parole Operations staff shall report to the Board of Parole Hearings any parolee who is reasonably believed to have engaged in the following kinds of behavior:

(1) Any conduct described in subdivision (c) of Section 667.5, any conduct described in subdivision (c) of Section 1192.7, or any assaultive conduct resulting in serious injury to the victim.

(2) Possession, control, use of, or access to any firearms, explosives, or crossbow or possession or any use of a weapon as specified in subdivision (a) of Section 12020, or any knife having a blade longer than two inches, except as provided in Section 2512 of Title 15 of the California Code of Regulations.

(3) Involvement in fraudulent schemes involving more than one thousand dollars (\$1,000).

(4) Sale, transportation, or distribution of any narcotic or other controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.

(5) A parolee whose whereabouts are unknown and has been unavailable for contact for 30 days.

(6) Any other conduct or pattern of conduct in violation of the conditions of parole deemed sufficiently serious by Division of Adult Parole Operations staff, including repetitive parole violations and escalating criminal conduct.

(7) The refusal to sign any form required by the Department of Justice explaining the duty of the person to register under Section 290.

(8) The failure to provide two blood specimens, a saliva sample, right thumb print impressions, and full palm print impressions of each hand as provided in Sections 295 through 300.3, requiring specified offenders to give samples before release.

(9) The failure to register as provided in Section 290, if the parolee is required to register.

(10) The failure to sign conditions of parole.

(11) Violation of the special condition prohibiting any association with any member of a prison gang, disruptive group, or criminal street gang activity, as enumerated in subdivision (e) of Section 186.22, if that condition was imposed.

(12) Violation of the special condition prohibiting any association with any member of a prison gang, disruptive group, or criminal street gang, as defined in subdivision (e) of Section 2513 of Title 15 of the California Code of Regulations, or the wearing or displaying of any gang colors, signs, symbols, or paraphernalia associated with gang activity, if that condition was imposed.

(13) Violation of the special condition requiring compliance with any gang-abatement injunction, ordinance, or court order, if that condition was imposed.

(14) Conduct indicating that the parolee's mental condition has deteriorated such that the parolee is likely to engage in future criminal behavior.

(15) Violation of the residency restrictions set forth in Section 3003.5 for parolees required to register as provided in Section 290.

(b) For any parolee whose commitment offense is described in subdivision (c) of Section 667.5, or subdivision (c) of Section 1192.7, the Division of Adult

Parole Operations shall report to the board any parolee whose conduct is reasonably believed to include the following kinds of behavior:

(1) Any behavior listed in subdivision (a).

(2) Any violent, assaultive, and or criminal conduct involving firearms.

(3) Any violation of a condition to abstain from alcoholic beverages.

(c) The mandatory reporting requirements enumerated in subdivisions (a) and (b) shall not preclude discretionary reporting of any conduct that the parole agent, unit supervisor, or district administrator feels is sufficiently serious to report, regardless of whether the conduct is being prosecuted in court.

(d) The board, as soon as practicable, shall require that all reports required by this section are transmitted electronically and that reports involving gang, firearm, and violent felonies are given appropriate priority.

SEC. 9.5. Section 5072 is added to the Penal Code, to read:

5072. (a) There is hereby established in the State Treasury the Parolee Reentry Fund for the purpose of funding contracts for parolee mentoring and workforce preparation programs to be awarded by the Secretary of the Department of Corrections and Rehabilitation. Recipients shall be required to have extensive expertise in designing, managing, monitoring, and evaluating mentoring, workforce, and comprehensive programs specific to parolees, including demonstrated evidence of an effective prisoner reentry program model. For purposes of awarding contracts, contract recipients are required to have extensive related experience working with federal, state, or local government agencies.

(b) The purpose of these programs is to target critical funding to assist and prepare offenders for return to their communities in an effort to reduce recidivism rates and the high costs and threat to public safety associated with the prevalent cycle of incarceration, release, and return to prison. The programs are also intended to provide support, opportunities, mentoring, education, and training to offenders on parole. Parameters of the programs shall be as follows:

(1) The programs shall focus on helping parolees make and sustain long-term attachments to the workforce.

(2) The programs shall offer parolees critical support services and referral for housing, addiction, and other services through a case management component. The program will also offer opportunities for positive social support through a mentoring component.

(3) The secretary may authorize programs that employ daily check-in facilities, GPS devices, voiceprints, or other technologies to monitor the daily activities of parolee participants, especially those who are not actively employed or participating in classes.

(c) The sum of twenty million dollars (\$20,000,000) is hereby appropriated from the General Fund to the Parolee Reentry Fund for the 2009–10 fiscal year and annually thereafter, adjusted for cost of living changes pursuant to the California Consumer Price Index.

(d) It is the intent of the people that emphasis be placed upon programs that provide public safety through aggressive supervision of parolees. An offender's conduct during the months immediately following release from prison are of critical importance and generally determine whether he or she will return to custody. Parolees must be subject to conditions that include, at a minimum, the state's right to conduct warrantless searches. Programs that help monitor or assist parolees, including GPS, job training, mentoring, and education programs offer substantial promise but cannot be effectively implemented by parole agents who are routinely burdened by caseloads of 100 or more parolees per agent.

(e) Accordingly, the department shall, within six months of the effective date of this act, adopt a public plan designed to recruit and train sufficient parole agents to reduce average caseloads below 50 parolees per agent with lower ratios for sex offenders, gang offenders, and other high-control groups. The overall caseload ratio shall be calculated based upon total parolees and total parole agents applying the same definitions and parole periods in place during the 2006–07 base year. The plan shall be fully implemented no later than December 31, 2010.

## SEC. 10. LAW ENFORCEMENT RESOURCES

SEC. 10.1. Section 30061.1 is added to the Government Code, to read:

30061.1. (a) There is hereby created in the State Treasury the Citizens Option for Public Safety Fund (COPS), which may be allocated only for the purposes specified in this section.

(b) The sum of five hundred million dollars (\$500,000,000) is hereby appropriated from the General Fund to the COPS Fund for the 2009–10 fiscal year, and annually each fiscal year thereafter, adjusted for cost of living pursuant to the California Consumer Price Index for the purpose of supporting



local public safety, antigang, and juvenile justice programs.

(c) Of the amount appropriated to the COPS Fund, one-half shall be transferred by the Controller to local jurisdictions through each county's Supplemental Law Enforcement Services Fund (SLESF) for support of programs authorized by Section 30061 as of July 1, 2007, for the 2009–10 fiscal year, and annually each fiscal year thereafter, for public safety, antigang, and other programs newly authorized pursuant to Section 30061.15. These funds shall be distributed in accordance with the provisions of the act that added this section.

(d) Of the amount appropriated to the COPS Fund, one-half shall be transferred by the Controller to the Safe Neighborhood Fund for the 2009–10 fiscal year, and annually each fiscal year thereafter, for public safety, antigang, and other programs newly authorized pursuant to Section 30061.15. These funds shall be distributed in accordance with the provisions of the act that added this section.

SEC. 10.2. Section 30061.15 is added to the Government Code, to read:

30061.15. (a) There is hereby created in the State Treasury the Safe Neighborhood Fund. Funds may only be distributed for the purposes specified in this section. All funding in this section shall be distributed according to the pro rata share of population as established annually by the Department of Finance, unless otherwise stated.

(b) The Comprehensive Safe Neighborhood Plan is hereby established to assist local law enforcement and communities throughout the state with a combination of programs that augment local enforcement and early intervention capacity and create regional and statewide antigang networks in order to deter crime, as well as enforce the law, as follows:

(1) Twelve percent of the Safe Neighborhood Fund shall be annually allocated by the Controller to city uniformed law enforcement agencies to be used to target violent, gang, firearm, and other street crimes. The funds shall be distributed on a pro rata basis based upon the population of each city as determined by the Department of Finance. The funds allocated to each city shall be used to enhance uniformed law enforcement within the recipient city.

(2) Ten percent of the Safe Neighborhood Fund shall be annually allocated by the Controller to county district attorneys to support violent felon, gang, and car theft vertical prosecution, to be deposited in each county's SLESF. Recipients are encouraged to expend a portion of the funding received pursuant to this subdivision, not to exceed 2 percent of a recipient's allocation, for training prosecutors in the effective use of the Street Terrorism Enforcement and Prevention (STEP) Act in gang prosecutions.

(3) Six percent of the Safe Neighborhood Fund shall be annually allocated by the Controller to the Office of Public Safety Education and Information to support multiagency, regional gang task forces and for statewide gang enforcement training programs for uniformed police and sheriffs.

(4) Eight percent of the Safe Neighborhood Fund shall be annually allocated to county sheriffs, and midsized cities with populations under 300,000 who are not currently eligible for the minimum grant of one hundred thousand dollars (\$100,000) under Section 30061, to address enforcement problems common to small, midsized, and fast growing communities so that they can more actively participate in county, regional, and statewide enforcement activities and programs to be distributed as follows:

(A) Two and thirty-two hundredths percent of the Safe Neighborhood Fund shall be distributed in equal amounts to county sheriffs.

(B) Five and sixty-eight hundredths percent of the Safe Neighborhood Fund to midsized cities, as defined in this paragraph, in pro rata shares based upon each city's population as determined by the Department of Finance.

(5) One percent of the Safe Neighborhood Fund shall be annually allocated by the Controller to the Office of Public Safety Education and Information for the purpose of distributing to cities that actively enforce civil gang injunctions.

(6) Twenty-six percent of the Safe Neighborhood Fund shall be annually allocated by the Controller to each participating county probation department according to its pro rata share of the population as follows:

(A) Twenty percent of the Safe Neighborhood Fund shall fund county probation programs to alleviate existing probation caseloads and to provide intensified supervision for adult offenders on probation.

(B) Six percent of the Safe Neighborhood Fund shall fund task forces to conduct searches of high-risk probationers to ensure compliance with their conditions of probation. Each participating county shall establish a Developing Increased Safety through Arms Recovery Management (DISARM) Team comprised of the county sheriff, at least one police chief from a city within the county, the district attorney, and the chief probation officer, and shall establish strategies, standards, and procedures to assist probation officers in removing firearms from high-risk probationers by ensuring compliance with their conditions of probation. For purposes of this subdivision, high-risk probationers shall include, but not be limited to, persons with at least one

conviction for any of the following crimes:

(i) Assault with a deadly weapon, as defined in Section 245 of the Penal Code.

(ii) Attempted murder, as defined in Section 664 of the Penal Code.

(iii) Homicide, as provided in Chapter 1 (commencing with Section 187) of Title 8 of Part 1 of the Penal Code.

(iv) Robbery, as provided in Sections 211, 212, 213, and 214 of the Penal Code.

(v) Criminal street gang crimes as described in Section 186.22 of the Penal Code.

(7) One percent of the Safe Neighborhood Fund shall be annually allocated by the Controller to support the California Early Intervention, Rehabilitation, and Accountability Commission authorized pursuant to Section 13921.

(8) Ten percent of the Safe Neighborhood Fund shall be annually allocated by the Controller to county sheriffs to support the construction and operation of jails to be deposited in each county's SLESF.

(9) Four percent of the Safe Neighborhood Fund shall be annually allocated by the Controller to the Department of Justice to support the California Witness Protection Program, or any successor program, created pursuant to Section 14020 of the Penal Code.

(10) Two percent of the Safe Neighborhood Fund shall be annually allocated by the Controller to the Office of Public Safety Education and Information, which shall contract with the Department of Justice or other California enforcement agency to develop and implement a secure statewide gang data warehouse system that shall interface with the current state Cal-Gang database to provide a gang information sharing database system available to local, state, and federal law enforcement agencies to better target and prosecute gang crime. After the first year, the Office of Public Safety Education and Information shall allocate two million dollars (\$2,000,000) each year to support and maintain this system and three million dollars (\$3,000,000) each year to regional gang informational resource centers to help offset the costs of personnel who will staff these resource centers.

(11) (A) Six percent of the Safe Neighborhood Fund shall be annually allocated by the Controller to counties for the purchase of Global Positioning System (GPS) tracking equipment to be used for monitoring high-risk individuals, including gang offenders, violent offenders, and sex offenders.

(i) Participating counties must submit to the Controller, no later than May 1 prior to the fiscal year in which funding is sought, a resolution adopted by the county board of supervisors requesting the amount sought to be used by the county sheriff or probation department to purchase and monitor GPS tracking equipment.

(ii) Funds shall be distributed to each participating county based on the sum requested by that county or that county's pro rata share of the total population of all participating counties, whichever is less.

(iii) If the total funds distributed is less than the annual allocation, the remainder shall be distributed to participating counties that sought a greater amount on the same basis as the initial distribution until the allocation is exhausted or all county requests have been honored.

(B) The cost of monitoring any offender who is subject to GPS tracking under conditions imposed by the state parole authority shall, for the duration of the GPS monitoring period, be a state expense. Any requirement that a county or local government monitor such an offender shall constitute a fully reimbursable state mandate.

(12) Four percent of the Safe Neighborhood Fund shall be annually allocated by the Controller to multiagency narcotic task forces with an emphasis on those task forces focusing on border interdiction. Eligible task forces (police and sheriffs) may be formed pursuant to this subdivision or may preexist, provided that only multijurisdictional task forces that do not restrict agency participation or leadership roles shall receive funding.

(13) Six percent of the Safe Neighborhood Fund shall be annually allocated by the Controller to the Office of Public Safety Education and Information for the purpose of disseminating criminal justice information to the public and administering public safety programs pursuant to Section 14260 of the Penal Code.

(14) Four percent of the Safe Neighborhood Fund shall be annually allocated by the Controller to the Office of Public Safety Education and Information for the purpose of matching local expenditures to fund law enforcement-run juvenile recreational and community service programs. Any sheriff's department, police department, or regional association of such agencies may apply for grant funding to administer a juvenile recreation program with an emphasis on sports, education, and community service. Eligible programs must be administered by peace officers and require an equal match of local

funding or in-kind services. The local match requirement may be met by the value of locally dedicated facilities or officer services or through charitable contributions. Priority shall be given to programs that provide services for at-risk juvenile populations, create alternatives to criminal street gang involvement, and ensure a long-term local commitment. Grants may be made for periods of up to 10 years.

SEC. 10.3. Section 30062.1 is added to the Government Code, to read:

30062.1. (a) There is hereby established the Safe Neighborhoods Compliance Enforcement Fund in the State Treasury to augment local government efforts to ensure that occupants of residential housing units paid for by vouchers issued pursuant to Section 8 of the United States Housing Act of 1937 (Section 1437f of Title 42 of the United States Code) comply with the regulations issued pursuant thereto and with the conditions of their publicly funded tenancies.

(b) The fund shall be administered by the Office of Public Safety Education and Information (OPSE), which shall match qualified increases in local agency expenditures to enhance regulatory capacity. The objective of this funding is to eliminate public funding of tenancies that are occupied by individuals who are involved in illegal gang, drug, or other criminal activity so that limited public resources can be used to assist law-abiding families in need of safe housing.

(c) There is hereby appropriated from the General Fund to the Safe Neighborhoods Compliance Enforcement Fund ten million dollars (\$10,000,000) for the 2009–10 fiscal year and annually thereafter, adjusted for cost of living changes pursuant to the California Consumer Price Index.

(d) Every governmental agency authorized to enforce compliance with occupancy requirements of vouchers pursuant to Section 8 of the United States Housing Act of 1937 may apply for a matching grant from the Safe Neighborhoods Compliance Enforcement Fund as follows:

(1) No later than March 30, 2009, and each year thereafter, each applicant agency shall submit to the Office of Public Safety Education and Information a request for funding documenting the following in order to be eligible:

(A) The source of the agency's regulating authority.

(B) The amount and source of the local agency's new funding or additional in-kind services, which shall match in equal dollar amount the grant sought from the Safe Neighborhoods Compliance Enforcement Fund.

(C) The additional personnel, equipment, or compliance enforcement procedures, to be financed by the grant funds.

(D) The number of vouchers pursuant to Section 8 of the United States Housing Act of 1937 issued within the agency's jurisdiction.

(E) The agency's process for ensuring that all occupants of Section 8 tenancies within the agency's jurisdiction are subject to a criminal background check at least once each year.

(2) No funds shall be awarded unless the criteria in paragraph (1) are met.

(f) (1) The Office of Public Safety Education and Information shall, on or before June 30, 2009, and each year thereafter, following the deadline for grant applications tabulate the total number of vouchers pursuant to Section 8 of the United States Housing Act of 1937 issued by all of the applicant agencies and shall assign to each agency a numerical factor (percentage) representing its proportionate share of the total number of vouchers pursuant to Section 8 of the United States Housing Act of 1937 issued by all applicant agencies.

(2) Each agency that timely complies with eligibility conditions and the application process shall be issued a 50-percent matching grant up to that percentage of the annual fund appropriation, which equals the agency's proportionate jurisdictional share (numerical factor) of all vouchers pursuant to Section 8 of the United States Housing Act of 1937 as calculated pursuant to subdivision (d).

(3) In the event that available funding is not exhausted pursuant to paragraph (1) of subdivision (d) the process shall be repeated so that each agency that has sought a grant greater in proportion to its percentage of total vouchers calculated pursuant to paragraph (1) shall participate in a second or subsequent pool.

(f) The Office of Public Safety Education and Information may use up to 3 percent of the total funding for necessary administration of the fund and oversight of recipient programs.

SEC. 10.4. Section 4004.6 is added to the Penal Code, to read:

4004.6. (a) This section applies to any county in which any of the following is true:

(1) The county is subject to federal court orders imposing population caps, or is subject to a self-imposed population cap.

(2) The county is releasing inmates early to avoid overcrowding exceeding 90 percent of jail capacity.

(3) The county has exceeded 90 percent of jail capacity on one or more occasions during each of six consecutive months.

(b) The sheriff of any county described in subdivision (a) or, in the case of Madera, Napa, and Santa Clara Counties, the board of supervisors or the Director of Corrections, shall, following a resolution adopted after notice and public hearing by the county board of supervisors, be authorized to employ and operate housing facilities that meet local health and safety codes for residential occupancy, and are deemed secure, as temporary jails or treatment facilities. Nothing in this section shall be construed to authorize the use of noncounty employees to staff temporary jail or treatment facilities. Facilities located within incorporated areas shall in addition require a resolution adopted by the city council.

(1) No inmate shall be housed in a temporary jail or treatment facility for a period exceeding 90 days based on a single sentence.

(2) Determinations regarding the placement of inmates and the security of jail facilities shall be made exclusively by the county sheriff upon consultation with the board of supervisors.

(3) The provisions of this act shall not be construed to limit or preclude any sheriff or, in the case of Madera, Napa, and Santa Clara Counties, the board of supervisors or the Director of Corrections, from employing lawfully authorized early release, electronic monitoring, or work release programs as necessary.

(4) Notwithstanding any other law or regulation, the use of an emergency jail facility authorized under this section is a discretionary act and shall not form the basis for civil liability on the part of the sheriff, the sheriff's department, or the county or municipality within which the facility is located.

(5) Any inmate who escapes from a temporary jail facility or other alternative housing facility shall, in accordance with current law, be in felony violation of Section 4532.

(c) In the event the condition constituting an emergency under this section is remedied and the total population of jail inmates within the subject county remains below 80 percent of permanent authorized capacity for 12 consecutive months, the sheriff or, in the case of Madera, Napa, and Santa Clara Counties, the board of supervisors or the Director of Corrections, shall, within a reasonable period of time, cease to admit inmates to emergency facilities or bring such facilities into compliance with all applicable laws and regulations for permanent inmate housing.

(d) The population of jail inmates shall, for purposes of this section, include any parole violators held in county jail facilities under contract with the Department of Corrections and Rehabilitation.

SEC. 10.5. Section 14175 of the Penal Code is repealed.

~~14175.—This title shall become inoperative on July 1, 2009, and is repealed as of January 1, 2010, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date.~~

SEC. 10.6. Section 14183 of the Penal Code is repealed.

~~14183.—This title shall become inoperative on July 1, 2010, and is repealed as of January 1, 2011, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends those dates.~~

#### SEC. 11. FUNDING OF EXISTING PROGRAMS

The following existing programs shall be funded at or above the level of funding they received in the Budget Act of 2007:

(1) Jail Efficiency Fund as established under Item 9210-105-0001.

(2) California Multi-Jurisdictional Methamphetamine Enforcement Team (CAL-MMET) program under Item 0690-101-0001.

(3) Central Valley Rural Crime Prevention Program established in Chapter 497 of the Statutes of 2005.

(4) Central Coast Rural Crime Prevention Program established in Chapter 18 of the Statutes of 2003.

(5) Juvenile Probation Camp Funding under Item 5225-101-0001, Schedule 1.

#### SEC. 12. INTENT REGARDING EXISTING PROGRAMS

It is the intent of the people that the adoption of the Safe Neighborhoods Act shall elevate public safety as a statewide priority and limit volatility in the funding of law enforcement and complementary programs of crime deterrence and offender rehabilitation. All too often, short-term economic problems and a multitude of competing interests cause promising programs of deterrence and law enforcement to come to an end or force public safety agencies to work without adequate personnel or equipment. Under the best of circumstances, California police, sheriffs, and correctional officers are faced with much higher caseloads than their counterparts in other parts of the country. Providing our public safety agencies authorization to enforce the law and deter crime is meaningless if these agencies are not provided resources commensurate with

their authority. Authorizing additional resources to combat methamphetamine interdiction will prove illusory if the recipient agencies simultaneously lose funding to combat street gangs and firearm violations. Accordingly, this act is designed to protect both new and existing programs and resources and to subject all of the enumerated programs to greater public scrutiny. The objective is to establish a higher commitment to both crime deterrence and enforcement and to sustain that level of commitment.

#### SEC. 13. EDUCATION FUNDING GUARANTEE

No provision within this act shall be construed to alter the calculation of the minimum state obligations under Section 8 of Article XVI of the California Constitution, nor diminish the actual state and local support for K–14 schools required by law except as authorized by the Constitution.

#### SEC. 14. INTENT REGARDING VOTER-APPROVED DRUG TREATMENT

No provision of this act shall be construed to change the eligibility of any person to participate in a voter-approved drug treatment program.

#### SEC. 15. NON-SUPPLANTATION CLAUSE

The funding authorized and/or made permanent under this act shall supplement and enhance the resources and capacity of public safety agencies and programs throughout California and, accordingly, the state, or any city, county, city and county, or other political subdivision is prohibited from reducing the level of funding received by any recipient agency or program below that amount received during the higher of the 2007–08 or the 2008–09 fiscal year so as to supplant or offset in whole or in part the enhanced level of funding authorized by this act.

#### SEC. 16. FUNDING FLOOR NOT CEILING

Nothing in this act shall preclude the Legislature from increasing or authorizing public safety appropriations greater than, or in addition to, those approved under this act.

#### SEC. 17. FUTURE FUNDING CLAUSE

Notwithstanding Section 13340 of the Government Code, any moneys allocated and appropriated under this act that are not encumbered or expended within any applicable period prescribed by law shall, together with the accrued interest on the amount, revert to and remain in the same account for encumbrance and expenditure for the next fiscal period. If any recipient program ceases to require funding authorized under this act or if such funds remain undistributed to eligible agencies for a period of two fiscal years after authorization, those funds shall revert to the General Fund.

#### SEC. 18. CONFLICTING BALLOT MEASURES

In the event that this measure relating to strengthening our communities by increasing prison sentences on violent offenders and criminal street gang members, or any other measure that reduces criminal penalties or authorizes early release of inmates, is approved by a majority of voters at the same election, and this measure receives a greater number of affirmative votes than any other such measure or measures, this measure shall control in its entirety and conflicting provisions in the said other measure or measures shall be rendered void and without any legal effect. If this measure is approved but does not receive a greater number of affirmative votes than said other measure or measures, this measure shall take effect to the extent permitted by law.

#### SEC. 19. STATUTORY REFERENCES

Unless otherwise indicated, all references within this act to a statute shall be construed to reference the statute as it existed on January 1, 2008.

#### SEC. 20. SEVERABILITY CLAUSE

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

#### SEC. 21. AMENDMENT CLAUSE

The provisions of this act shall not be amended by the Legislature except by a statute passed in each house by rollcall vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the provisions of this act to expand the scope of their application or to increase punishments or penalties provided herein by a statute passed by majority vote in each house thereof.

## PROPOSITION 7

This initiative measure is submitted to the people of California in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends sections of the Public Utilities Code and

amends and adds sections to the Public Resources Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

## PROPOSED LAW

### THE SOLAR AND CLEAN ENERGY ACT OF 2008

#### SECTION 1. TITLE

This measure shall be known as “The Solar and Clean Energy Act of 2008.”

#### SEC. 2. FINDINGS AND DECLARATIONS

The people of California find and declare the following:

A. Global warming and climate change is now a real crisis. With the polar ice caps continuing to melt, temperatures rising worldwide, increasing greenhouse gases, and dramatic climate changes occurring, we are quickly reaching the tipping point. California is facing a serious threat from rising sea levels, increased drought, and melting Sierra snowpack that feed our water supply. California needs solar and clean energy to attack the climate changes which threaten our state.

B. California suffers from drought, air pollution, poor water quality, and many other environmental problems. Very little has been done because the special energy interests block change. Californians must take energy reform into their own hands. The alternative to dirty energy is solar and clean energy.

C. California can provide the leadership needed to attack global warming and climate change.

D. The Solar and Clean Energy Act will help reduce air pollution in California. With this initiative, we can help clean up our air and build a healthier, cleaner environment for our children.

E. Our traditional sources of power rely too much on fossil fuels and foreign energy that are getting more and more expensive and less reliable. This initiative will encourage investment in solar and clean energy sources that in the long-run are cheaper and are located here in California, and in the short-term, California's investment in solar and clean energy will result in no more than a 3 percent increase in electric rates—a small price to pay for a healthier and cleaner environment.

F. The Solar and Clean Energy Act will put California on the path to energy independence by requiring all electric utilities to produce 50 percent of their electricity from clean energy sources like solar and wind by 2025. Right now, over 22 percent of California's greenhouse gases comes from electricity generation but around 10 percent of California's electricity comes from solar and clean energy sources, leaving Californians vulnerable to high energy costs, to political instability in the Middle East, and to being held hostage by big oil companies.

G. The Solar and Clean Energy Act encourages new technology to produce electricity. Many people are familiar with the solar power that comes from panels that can be placed on rooftops, but there is dramatic new technology that allows solar energy to be generated from concentrations of solar mirrors in the desert. These mirrors are so efficient that a large square array, eleven miles on a side, may be able to generate enough electricity to meet all of California's needs and at a lower cost than we are paying today. The desert could lead us to energy independence.

H. The current law says we are supposed to have 20 percent solar and clean energy but we are still at around 10 percent and even big government-owned utilities like those in Los Angeles and Sacramento lobbied successfully to exempt themselves from the law. The Solar and Clean Energy Act provides incentives, tough standards, and penalties for those who do not comply.

I. The Solar and Clean Energy Act will benefit California's economy. Building facilities for solar and clean energy sources and transmission lines to transport that electricity will create good jobs that pay the prevailing wage. These jobs will bring new investments and new jobs to California and strengthen California's economy.

J. Global warming and California's reliance on fossil fuels and foreign energy are a matter of statewide concern, as is the implementation of statewide standards for the sources of electricity production and the permitting of solar and clean energy plants and related transmission facilities. Accordingly, the people find that these matters are not municipal affairs, as that term is used in Section 5 of Article XI of the California Constitution, but are instead matters of statewide concern.

#### SEC. 3. PURPOSE AND INTENT



It is the intent of the people of California in enacting this measure to:

A. Address global warming and climate change, and protect the endangered Sierra snowpack by reducing California's carbon-based greenhouse gas emissions;

B. Tap proven technologies such as solar, geothermal, wind, biomass, and small hydroelectric to generate clean energy throughout California and meet renewable energy targets without raising taxes on any California taxpayer;

C. Require all California utilities—including government-owned utilities like the Los Angeles Department of Water and Power—to procure electricity from solar and clean energy resources, in the following timeframes:

1. 20 percent by 2010;
2. 40 percent by 2020; and,
3. 50 percent by 2025;

D. Fast-track all approvals for the development of solar and clean energy plants and related transmission facilities while guaranteeing all environmental protections—including the Desert Protection Act;

E. Create production incentives for the development and construction of solar and clean energy plants and related transmission facilities;

F. Assess penalties upon all utilities that fail to meet renewable resource targets, and prohibit these utilities from passing on these penalties to consumers;

G. Permit long-term 20 year contracts for solar and clean energy to assure marketability and financing of solar and clean energy plants;

H. Cap price impacts on consumers' electricity bills at less than 3 percent. Over the long-term, studies have shown that consumer electricity costs will decline;

I. Grant the Public Utilities Commission the powers to enforce compliance of the renewables portfolio standard upon privately owned utilities, assess penalties for non-compliance, and prohibit utilities from passing on penalties to consumers;

J. Grant the California State Energy Resources Conservation and Development Commission (the Energy Commission) the powers to:

1. Enforce compliance of the renewables portfolio standard upon government-owned utilities, assess penalties to those utilities for non-compliance, and prohibit the utilities from passing on penalties to consumers;

2. Adopt rules to fast-track all approvals for the development of solar and clean energy resources and plants while guaranteeing all environmental protections—including the Desert Protection Act;

3. Allocate funds to purchase, sell, or lease real property, personal property or rights-of-way for the development and use of the property and rights-of-way for the generation and/or transmission of solar and clean energy, and to upgrade existing transmission lines; and,

4. Identify and designate Solar and Clean Energy Zones—primarily in the desert.

SEC. 4. Section 387 of the Public Utilities Code is amended to read:

387. (a) Each governing body of a local publicly owned electric utility, as defined in Section 9604, shall be responsible for implementing and enforcing a implement the renewables portfolio standard as established and defined in this article that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.

(b) Each local publicly owned electric utility shall report, on an annual basis, to its customers and to the State Energy Resources Conservation and Development Commission, the following:

(1) Expenditures of public goods funds collected pursuant to Section 385 for eligible renewable energy resource development. Reports shall contain a description of programs, expenditures, and expected or actual results.

(2) The resource mix used to serve its customers by fuel type. Reports shall contain the contribution of each type of renewable energy resource with separate categories for those fuels that are eligible renewable energy resources as defined in Section 399.12, except that the electricity is delivered to the local publicly owned electric utility and not a retail seller. Electricity shall be reported as having been delivered to the local publicly owned electric utility from an eligible renewable energy resource when the electricity would qualify for compliance with the renewables portfolio standard if it were delivered to a retail seller.

(3) The utility's status in implementing a renewables portfolio standard pursuant to subdivision (a) and the utility's progress toward attaining the standard following implementation.

SEC. 5. Section 399.25 of the Public Utilities Code is amended to read:

399.25. (a) Notwithstanding any other provision in Sections 1001 to 1013,

inclusive, an application of an electrical corporation for a certificate authorizing the construction of new transmission facilities shall be deemed to be necessary to the provision of electric service for purposes of any determination made under Section 1003 if the commission finds that the new facility is necessary to facilitate achievement of the renewable power goals established in Article 16 (commencing with Section 399.11).

(b) (a) With respect to a transmission facility described in subdivision (a) any transmission facilities deemed to be necessary by the Energy Commission to facilitate achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11) of the Public Utilities Code, the commission shall take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission are fully reflected in any retail rates established by the commission. These actions shall include, but are not limited to:

(1) Making findings, where supported by an evidentiary record, that those transmission facilities provide benefit to the transmission network and are necessary to facilitate the achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).

(2) Directing the utility to which the generator will be interconnected, where the direction is not preempted by federal law, to seek the recovery through general transmission rates of the costs associated with the transmission facilities.

(3) Asserting the positions described in paragraphs (1) and (2) to the Federal Energy Regulatory Commission in appropriate proceedings.

(4) Allowing recovery in retail rates of any increase in transmission costs incurred by an electrical corporation a retail seller resulting from the construction of the transmission facilities that are not approved for recovery in transmission rates by the Federal Energy Regulatory Commission after the commission determines that the costs were prudently incurred in accordance with subdivision (a) of Section 454.

(b) Notwithstanding subdivision (a), a retail seller shall not recover any costs paid through the Solar and Clean Energy Transmission Account to facilitate the construction of any transmission facilities.

SEC. 6. Section 399.11 of the Public Utilities Code is amended to read:

399.11. The Legislature people finds find and declares declare all of the following:

(a) In order to attain a the target targets of generating 20 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2010, 40 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2020, and 50 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2025, and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix to address global warming and climate change, and to protect the endangered Sierra snowpack, it is the intent of the Legislature people that the commission and the State Energy Resources Conservation and Development Commission implement the California Renewables Portfolio Standard Program described in this article.

(b) Increasing California's reliance on eligible renewable energy resources may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels.

(c) The development of eligible renewable energy resources and the delivery of the electricity generated by those resources to customers in California may ameliorate air quality problems throughout the state, address global warming and climate change, protect the endangered Sierra snowpack, and improve public health by reducing the burning of fossil fuels and the associated environmental impacts and by reducing in-state fossil fuel consumption.

(d) The California Renewables Portfolio Standard Program is intended to complement the Renewable Energy Resources Program administered by the State Energy Resources Conservation and Development Commission and established pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.

(e) New and modified electric transmission facilities may be necessary to facilitate the state achieving its renewables portfolio standard targets.

SEC. 7. Section 399.12 of the Public Utilities Code is amended to read:

399.12. For purposes of this article, the following terms have the following meanings:

(a) "Conduit hydroelectric facility" means a facility for the generation of electricity that uses only the hydroelectric potential of an existing pipe, ditch, flume, siphon, tunnel, canal, or other manmade conduit that is operated to distribute water for a beneficial use.

(b) "Delivered" and "delivery" have the same meaning as provided in subdivision (a) of Section 25741 of the Public Resources Code.

(c) "Eligible renewable energy resource" means ~~an electric generating a solar and clean energy~~ facility that meets the definition of "in-state renewable electricity generation facility" in Section 25741 of the Public Resources Code, subject to the following limitations:

(1) (A) An existing small hydroelectric generation facility of 30 megawatts or less shall be eligible only if a retail seller owned or procured the electricity from the facility as of December 31, 2005. A new hydroelectric facility is not an eligible renewable energy resource if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(B) Notwithstanding subparagraph (A), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource. A conduit hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy resource so long as it does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(2) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable energy resource unless it is located in Stanislaus County and was operational prior to September 26, 1996.

(d) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

(e) "Local publicly owned electric utility" has the same meaning as provided in subdivision (d) of Section 9604.

(f) "Procure" means that a retail seller receives delivered electricity generated by an eligible renewable energy resource that it owns or for which it has entered into an electricity purchase agreement. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article.

(g) "Renewables portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to this article.

(h) (1) "Renewable energy credit" means a certificate of proof, issued through the accounting system established by the Energy Commission pursuant to Section 399.13, that one unit of electricity was generated and delivered by an eligible renewable energy resource.

(2) "Renewable energy credit" includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, except for an emissions reduction credit issued pursuant to Section 40709 of the Health and Safety Code and any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels.

(3) No electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimus quantity, as determined by the Energy Commission, shall result in the creation of a renewable energy credit.

(i) "Retail seller" means an entity engaged in the retail sale of electricity to end-use customers located within the state, including any of the following:

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard program subject to the same terms and conditions applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3, for all sales of electricity to customers beginning January 1, 2006. The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard program. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

(4) "Retail seller" does not include any of the following:

(A) A corporation or person employing cogeneration technology or producing electricity consistent with subdivision (b) of Section 218.

(B) The Department of Water Resources acting in its capacity pursuant to Division 27 (commencing with Section 80000) of the Water Code.

~~(C) A local publicly owned electric utility.~~

SEC. 8. Section 399.13 of the Public Utilities Code is amended to read:

399.13. The Energy Commission shall do all of the following:

(a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (b) of Section 399.12.

(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, to certify renewable energy credits produced by eligible renewable energy resources, and to verify retail product claims in this state or any other state. In establishing the guidelines governing this accounting system, the Energy Commission shall collect data from electricity market participants that it deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). In seeking data from ~~electrical corporations~~ retail sellers, the Energy Commission shall request data from the commission. The commission shall collect data from ~~electrical corporations~~ retail sellers and remit the data to the Energy Commission within 90 days of the request.

(c) Establish a system for tracking and verifying renewable energy credits that, through the use of independently audited data, verifies the generation and delivery of electricity associated with each renewable energy credit and protects against multiple counting of the same renewable energy credit. The Energy Commission shall consult with other western states and with the Western Electricity Coordinating Council in the development of this system.

(d) Certify, for purposes of compliance with the ~~renewable~~ renewables portfolio standard requirements by a retail seller, the eligibility of renewable energy credits associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility, if the Energy Commission determines that the following conditions have been satisfied:

(1) The local publicly owned electric utility that is procuring the electricity is in compliance with the requirements of Section 387.

(2) The local publicly owned electric utility has established ~~an~~ the annual renewables portfolio standard ~~targets target comparable to those applicable to an electrical corporation required by Section 399.15,~~ is procuring sufficient eligible renewable energy resources to satisfy the targets, and will not fail to satisfy the targets in the event that the renewable energy credit is sold to another retail seller.

~~(e) Institute a rulemaking proceeding to determine the manner in which a local publicly owned electric utility will comply with Section 387 and implement the renewables portfolio standard program. The Energy Commission shall utilize the same processes and have the same powers to enforce the renewables portfolio standard program with respect to local publicly owned electric utilities as the commission has with respect to retail sellers, including, but not limited to, those processes and powers specified in Sections 399.14 and 399.15 related to the review and adoption of a renewable energy procurement plan, establishment of flexible rules for compliance, and imposition of annual penalties for failure to comply with a local publicly owned electric utility's renewable energy procurement plan. The Energy Commission shall not have any authority to approve or disapprove the terms, conditions, or pricing of any renewable energy resources contract entered into by a local publicly owned electric utility, or authority pursuant to Section 2113.~~

SEC. 9. Section 399.14 of the Public Utilities Code is amended to read:

399.14. (a) (1) The commission shall direct each ~~electrical corporation~~ retail seller to prepare a renewable energy procurement plan that includes the matter in paragraph (3), to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each ~~electrical corporation~~ retail seller to review and update its renewable energy procurement plan as it determines to be necessary.

(2) The commission shall adopt, by rulemaking, all of the following:

~~(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources.~~

~~(B)(4) A process that provides criteria for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources to comply with the annual California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall consider estimates of indirect costs associated with needed transmission investments and ongoing utility expenses resulting from integrating and operating eligible renewable energy resources.~~

~~(C)(B) (i) Flexible rules for compliance, including rules permitting retail~~

sellers to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years. The flexible rules for compliance shall apply to all years, including years before and after a retail seller procures at least 20 50 percent of total retail sales of electricity from eligible renewable energy resources.

(ii) The flexible rules for compliance shall address situations where, as a result of insufficient transmission, a retail seller is unable to procure eligible renewable energy resources sufficient to satisfy the requirements of this article. Any rules addressing insufficient transmission shall require a finding by the commission that the retail seller has undertaken all reasonable efforts to do all of the following:

(I) Utilize flexible delivery points.

(II) Ensure the availability of any needed transmission capacity.

(III) If the retail seller is an electric corporation, to construct needed transmission facilities.

(IV) Nothing in this subparagraph shall be construed to revise any portion of Section 454.5.

(D)(C) Standard terms and conditions to be used by all ~~electrical corporations~~ retail sellers in contracting for eligible renewable energy resources, including performance requirements for renewable generators. A contract for the purchase of electricity generated by an eligible renewable energy resource shall, at a minimum, include the renewable energy credits associated with all electricity generation specified under the contract. The standard terms and conditions shall include the requirement that, no later than six months after the commission's approval of an electricity purchase agreement entered into pursuant to this article, the following information about the agreement shall be disclosed by the commission: party names, resource type, project location, and project capacity.

(3) Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by ~~an electrical corporation~~ a retail seller shall include all of the following:

(A) An assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of eligible renewable energy resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.

(B) Provisions for employing available compliance flexibility mechanisms established by the commission.

(C) A bid solicitation setting forth the need for eligible renewable energy resources of each deliverability characteristic, required online dates, and locational preferences, if any.

(4) In soliciting and procuring eligible renewable energy resources, each ~~electrical corporation~~ retail seller shall offer contracts of no less than 20 years in duration, unless the commission approves of a contract of shorter duration.

(5) In soliciting and procuring eligible renewable energy resources, each ~~electrical corporation~~ retail seller may give preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(b) The commission may authorize a retail seller to enter into a contract of less than 20 years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 20 years' duration or from new facilities commencing commercial operations on or after January 1, 2005.

(c) The commission shall review and accept, modify, or reject each ~~electrical corporation's~~ retail seller's renewable energy procurement plan prior to the commencement of renewable procurement pursuant to this article by ~~an electrical corporation~~ a retail seller.

(d) The commission shall review the results of an eligible renewable energy resources solicitation submitted for approval by ~~an electrical corporation~~ a retail seller and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable energy procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition among the bidders, the commission shall direct the ~~electrical corporation~~ retail seller to renegotiate the contracts or conduct a new solicitation.

(e) If an electrical corporation fails to comply with a commission order adopting a renewable energy procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance. ~~The commission shall enforce comparable penalties on any other retail seller that fails to meet annual procurement targets established pursuant to Section 399.15.~~

(f) (i) The commission may authorize a procurement entity to enter into

contracts on behalf of customers of a retail seller for deliveries of eligible renewable energy resources to satisfy annual renewables portfolio standard obligations. The commission may not require any person or corporation to act as a procurement entity or require any party to purchase eligible renewable energy resources from a procurement entity.

(2) Subject to review and approval by the commission, the procurement entity shall be permitted to recover reasonable administrative and procurement costs through the retail rates of end-use customers that are served by the procurement entity and are directly benefiting from the procurement of eligible renewable energy resources.

(g) Procurement and administrative costs associated with long-term contracts entered into by ~~an electrical corporation~~ a retail seller for eligible renewable energy resources pursuant to this article, ~~and approved by the commission no more than 10 percent over the market price determined by the Energy Commission pursuant to subdivision (c) of Section 399.15,~~ shall be deemed reasonable per se for electricity delivered on or before January 1, 2030, and shall be recoverable in rates.

(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives or funding pursuant to ~~Section~~ Sections 25742, 25743 or 25751.5 of the Public Resources Code, including work performed to qualify, receive, or maintain production incentives is "public works" for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(i) ~~The commission shall impose annual penalties up to the amount of the shortfall in kilowatthours multiplied by one cent (\$0.01) per kilowatthour on any retail seller that fails to meet the annual procurement targets established pursuant to Section 399.15. The commission shall not cap the penalty that may be imposed on a retail seller under this section. All penalties assessed and collected pursuant to this section shall be paid or transferred annually to the Solar and Clean Energy Transmission Account administered by the Energy Commission pursuant to Section 25751.5 of the Public Resources Code and shall be used for programs designed to foster the development of new in-state transmission and renewable electricity generation facilities. Penalties paid or transferred by any retail seller pursuant to this section shall not be recoverable by the retail seller either directly or indirectly in rates.~~

(j) ~~Penalties assessed pursuant to subdivision (i) may be waived upon a finding by the commission that there is good cause for a retail seller's failure to comply with a commission order adopting a renewable energy procurement plan. A finding by the commission that there is good cause for failure to comply with a commission order adopting a renewable energy procurement plan shall be made if the commission determines that any one of the following conditions are met:~~

(1) ~~The deadline or milestone changed due to circumstances beyond the retail seller's control, including, but not limited to, administrative and legal appeals, seller non-performance, insufficient response to a competitive solicitation for eligible renewable energy resources, and lack of effective competition.~~

(2) ~~The retail seller demonstrates a good faith effort to meet the target, including, but not limited to, executed contracts that provide future deliveries sufficient to satisfy current year deficits.~~

(3) ~~The target was missed due to unforeseen natural disasters or acts of God that prevent timely completion of the project deadline or milestone.~~

(4) ~~The retail seller is unable to receive energy from eligible renewable energy resources due to inadequate electric transmission lines.~~

(5) ~~For any year up to and including December 31, 2013, a local publicly owned electric utility demonstrates that, despite its good faith effort, it has had insufficient time to meet the annual procurement targets established in Section 399.15.~~

SEC. 10. Section 399.15 of the Public Utilities Code is amended to read:

399.15. (a) In order to fulfill unmet long-term resource needs, ~~reduce greenhouse gas emissions, address global warming and climate change, protect the endangered Sierra snowpack, and lessen California's dependence on fluctuating fuel prices,~~ the commission shall establish a renewables portfolio standard requiring all ~~electrical corporations~~ retail sellers to procure a minimum quantity of electricity generated by eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, ~~subject to limits on the total amount of costs expended above the market prices determined in subdivision (c), to achieve the targets established under this article.~~

(b) The commission shall implement annual procurement targets for each retail seller as follows:

(i) ~~Notwithstanding Section 454.5, each~~ Each retail seller shall, pursuant to

subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional + 2 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010, 40 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2020, and 50 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2025. A retail seller with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of renewable energy resources in the following year.

(2) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each retail seller based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and to the extent applicable, adjusted going forward pursuant to Section 399.12.

(3) Only for purposes of establishing these targets, the commission shall include all electricity sold to retail customers by the Department of Water Resources pursuant to Section 80100 of the Water Code in the calculation of retail sales by an electrical corporation a retail seller.

(4) A retail seller is required to accept all bilateral offers for electricity generated by eligible renewable energy resources that are less than or equal to the market prices established pursuant to subdivision (c), except that a retail seller is not obligated to accept a bilateral offer for any year in which the retail seller has procured sufficient renewable energy resources to meet its annual target established pursuant to this subdivision. In the event that a retail seller fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the retail seller shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall, subject to the limitation on costs for electrical corporations established pursuant to subdivision (d).

(c) The Energy Commission commission shall determine by a rulemaking proceeding establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with eligible renewable energy resources; and the methodology for making that determination that considers in consideration of the following:

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation's a retail seller's general procurement activities as authorized by the commission.

(2) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.

(3) The value of different products including baseload, peaking, and as-available electricity.

(4) Natural gas price forecasts that are consistent with forecasts used for procurement of other resources, including loading order resources.

(5) The value and benefits of renewable resources, including, but not limited to, hedging value and carbon emissions reductions.

(6) The value and benefits of baseload generation.

(d) A retail seller shall not be required to enter into long-term contracts with operators of eligible renewable energy resources that exceed by more than 10 percent the market prices established pursuant to subdivision (c) for electricity delivered on or before January 1, 2030. The commission shall allow a retail seller to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured at no more than 10 percent over the market price established pursuant to subdivision (c). Indirect costs associated with the purchase of eligible renewable energy resources by a retail seller, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades, are recoverable in rates, as authorized by the commission. The commission shall establish, for each electrical corporation, a limitation on the total costs expended above the market prices determined in subdivision (c) for the procurement of eligible renewable energy resources to achieve the annual procurement targets established under this article:

(1) The cost limitation shall be equal to the amount of funds transferred to each electrical corporation by the Energy Commission pursuant to subdivision (b) of Section 25743 of the Public Resources Code and the 51.5 percent of the funds which would have been collected through January 1, 2012, from the customers of the electrical corporation based on the renewable energy public goods charge in effect as of January 1, 2007.

(2) The above market costs of a contract selected by an electrical corporation may be counted toward the cost limitation if all of the following conditions are satisfied:

(A) The contract has been approved by the commission and was selected

through a competitive solicitation pursuant to the requirements of subdivision (d) of Section 399.14:

(B) The contract covers a duration of no less than 10 years:

(C) The contracted project is a new or repowered facility commencing commercial operations on or after January 1, 2005.

(D) No purchases of renewable energy credits may be eligible for consideration as an above market cost:

(E) The above market costs of a contract do not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades:

(3) If the cost limitation for an electrical corporation is insufficient to support the total costs expended above the market prices determined in subdivision (c) for the procurement of eligible renewable energy resources satisfying the conditions of paragraph (2), the commission shall allow the electrical corporation to limit its procurement to the quantity of eligible renewable energy resources that can be procured at or below the market prices established in subdivision (c):

(4) Nothing in this section prevents an electrical corporation from voluntarily proposing to procure eligible renewable energy resources at above market prices that are not counted toward the cost limitation. Any voluntary procurement involving above market costs shall be subject to commission approval prior to the expense being recovered in rates:

(e) The establishment of a renewables portfolio standard shall not constitute implementation by the commission of the federal Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).

(f) The Energy Commission commission shall consult with the Energy Commission commission in calculating market prices under subdivision (c). and The Energy Commission and the commission shall consult with each other in establishing other renewables portfolio standard policies.

SEC. 11. Section 1001 of the Public Utilities Code is amended to read:

1001. Except as otherwise provided in Division 15 (commencing with Section 25000) of the Public Resources Code, no No railroad corporation whose railroad is operated primarily by electric energy, street railroad corporation, gas corporation, electrical corporation, telegraph corporation, telephone corporation, water corporation, or sewer system corporation shall begin the construction of a street railroad, or of a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.

This article shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations, or for an extension into territory either within or without a city or city and county contiguous to its street railroad, or line, plant, or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business. If any public utility, in constructing or extending its line, plant, or system, interferes or is about to interfere with the operation of the line, plant, or system of any other public utility or of the water system of a public agency, already constructed, the commission, on complaint of the public utility or public agency claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable.

SEC. 12. Section 25107 of the Public Resources Code is amended to read:

25107. "Electric transmission line" means any electric powerline carrying electric power from a thermal powerplant or a solar and clean energy plant located within the state to a point of junction with any interconnected transmission system. "Electric transmission line" does not include any replacement on the existing site of existing electric powerlines with electric powerlines equivalent to such existing electric powerlines or the placement of new or additional conductors, insulators, or accessories related to such electric powerlines on supporting structures in existence on the effective date of this division or certified pursuant to this division.

SEC. 13. Section 25110 of the Public Resources Code is amended to read:

25110. "Facility" means any electric transmission line, or thermal powerplant, or solar and clean energy plant, or both electric transmission line and thermal powerplant or solar and clean energy plant, and extensions, modifications, upgrades of existing electric transmission lines, regulated according to the provisions of this division.

SEC. 14. Section 25137 is added to the Public Resources Code, to read:

25137. “Solar and clean energy plant” means any electrical generating facility using wind, solar photovoltaic, solar thermal, biomass, biogas, geothermal, fuel cells using renewable fuels, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current technologies, with a generating capacity of 30 megawatts or more, or small hydroelectric generation of 30 megawatts or less, and any facilities appurtenant thereto. Exploratory, development, and production wells, resource transmission lines, and other related facilities used in connection with a renewable project or a renewable development project are not appurtenant facilities for the purposes of this division.

SEC. 15. Section 25502 of the Public Resources Code is amended to read:

25502. Each person proposing to construct a thermal powerplant, *solar and clean energy plant*, or electric transmission line on a site shall submit to the commission a notice of intention to file an application for the certification of the site and related facility or facilities. The notice shall be an attempt primarily to determine the suitability of the proposed sites to accommodate the facilities and to determine the general conformity of the proposed sites and related facilities with standards of the commission and assessments of need adopted pursuant to Sections 25305 to 25308, inclusive. The notice shall be in the form prescribed by the commission and shall be supported by such information as the commission may require.

Any site and related facility once found to be acceptable pursuant to Section 25516 is, and shall continue to be, eligible for consideration in an application for certification without further proceedings required for a notice under this chapter.

SEC. 16. Section 25517 of the Public Resources Code is amended to read:

25517. Except as provided in Section 25501, no construction of any thermal powerplant, *solar and clean energy plant*, or electric transmission line shall be commenced by any electric utility without first obtaining certification as prescribed in this division. Any onsite improvements not qualifying as construction may be required to be restored as determined by the commission to be necessary to protect the environment, if certification is denied.

SEC. 17. Section 25522 of the Public Resources Code is amended to read:

25522. (a) Except as provided in subdivision (c) of Section 25520.5 and Section 25550, within 18 months of the filing of an application for certification, or within 12 months if it is filed within one year of the commission’s approval of the notice of intent, or at any later time as is mutually agreed by the commission and the applicant, the commission shall issue a written decision as to the application.

(b) The commission shall determine, within 45 days after it receives the application, whether the application is complete. If the commission determines that the application is complete, the application shall be deemed filed for purposes of this section on the date that this determination is made. If the commission determines that the application is incomplete, the commission shall specify in writing those parts of the application which are incomplete and shall indicate the manner in which it can be made complete. If the applicant submits additional data to complete the application, the commission shall determine, within 30 days after receipt of that data, whether the data is sufficient to make the application complete. The application shall be deemed filed on the date when the commission determines the application is complete if the commission has adopted regulations specifying the informational requirements for a complete application, but if the commission has not adopted regulations, the application shall be deemed filed on the last date the commission receives any additional data that completes the application.

SEC. 18. Section 25531 of the Public Resources Code is amended to read:

25531. (a) The decisions of the commission on any application for certification of a site and related facility are subject to judicial review by the Supreme Court of California.

(b) No new or additional evidence may be introduced upon review and the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the United States Constitution or the California Constitution. The findings and conclusions of the commission on questions of fact are final and are not subject to review, except as provided in this article. These questions of fact shall include ultimate facts and the findings and conclusions of the commission. A report prepared by, or an approval of, the commission pursuant to Section

25510, 25514, 25516, or 25516.5, or subdivision (b) of Section 25520.5, shall not constitute a decision of the commission subject to judicial review.

(c) Subject to the right of judicial review of decisions of the commission, no court in this state has jurisdiction to hear or determine any case or controversy concerning any matter which was, or could have been, determined in a proceeding before the commission, or to stop or delay the construction or operation of any thermal powerplant or *solar and clean energy plant* except to enforce compliance with the provisions of a decision of the commission.

(d) Notwithstanding Section 1250.370 of the Code of Civil Procedure:

(1) If the commission requires, pursuant to subdivision (a) of Section 25528, as a condition of certification of any site and related facility, that the applicant acquire development rights, that requirement conclusively establishes the matters referred to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any eminent domain proceeding brought by the applicant to acquire the development rights.

(2) If the commission certifies any site and related facility, that certification conclusively establishes the matters referred to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any eminent domain proceeding brought to acquire the site and related facility.

(e) No decision of the commission pursuant to Section 25516, 25522, or 25523 shall be found to mandate a specific supply plan for any utility as prohibited by Section 25323.

SEC. 19. Section 25540.6 of the Public Resources Code is amended to read:

25540.6. (a) Notwithstanding any other provision of law, no notice of intention is required, and the commission shall issue its final decision on the application, as specified in Section 25523, within 12 months after the filing of the application for certification of the powerplant and related facility or facilities, or at any later time as is mutually agreed by the commission and the applicant, for any of the following:

(1) A thermal powerplant which will employ cogeneration technology, a thermal powerplant that will employ natural gas-fired technology, or a *solar and clean energy plant* ~~solar thermal powerplant~~.

(2) A modification of an existing facility.

(3) A thermal powerplant or *solar and clean energy plant* which it is only technologically or economically feasible to site at or near the energy source.

(4) A thermal powerplant with a generating capacity of up to 100 megawatts.

(5) A thermal powerplant or *solar and clean energy plant* designed to develop or demonstrate technologies which have not previously been built or operated on a commercial scale. Such a research, development, or commercial demonstration project may include, but is not limited to, the use of renewable or alternative fuels, improvements in energy conversion efficiency, or the use of advanced pollution control systems. Such a facility may not exceed 300 megawatts unless the commission, by regulation, authorizes a greater capacity. Section 25524 does not apply to such a powerplant and related facility or facilities.

(b) Projects exempted from the notice of intention requirement pursuant to paragraph (1), (4), or (5) of subdivision (a) shall include, in the application for certification, a discussion of the applicant’s site selection criteria, any alternative sites that the applicant considered for the project, and the reasons why the applicant chose the proposed site. That discussion shall not be required for cogeneration projects at existing industrial sites. The commission may also accept an application for a noncogeneration project at an existing industrial site without requiring a discussion of site alternatives if the commission finds that the project has a strong relationship to the existing industrial site and that it is therefore reasonable not to analyze alternative sites for the project.

SEC. 20. Section 25541 of the Public Resources Code is amended to read:

25541. The commission may exempt from this chapter thermal powerplants with a generating capacity of up to 100 megawatts, and modifications to existing generating facilities that do not add capacity in excess of 100 megawatts, and *solar and clean energy plants*, if the commission finds that no substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility or from the modifications.

SEC. 21. Section 25541.1 of the Public Resources Code is amended to read:

25541.1. It is the intent of the ~~Legislature~~ *people* to encourage the development of thermal powerplants or *solar and clean energy plants* using resource recovery (waste-to-energy) technology. Previously enacted incentives for the production of electrical energy from nonfossil fuels in commercially



scaled projects have failed to produce the desired results. At the same time, the state faces a growing problem in the environmentally safe disposal of its solid waste. The creation of electricity by a thermal powerplant or solar and clean energy plant using resource recovery technology addresses both problems by doing all of the following:

(a) Generating electricity from a nonfossil fuel of an ample, growing supply.

(b) Conserving landfill space, thus reducing waste disposal costs.

(c) Avoiding the health hazards of burying garbage.

Furthermore, development of resource recovery facilities creates new construction jobs, as well as ongoing operating jobs, in the communities in which they are located.

SEC. 22. Section 25542.5 is added to the Public Resources Code, to read: 25542.5. *The Energy Commission shall, on an annual basis, publish a report that identifies and designates Solar and Clean Energy Zones in the state of California based on geographic areas identified by the Energy Commission's Public Interest Energy Research Program as having potential for solar and clean energy resources.*

SEC. 23. Section 25550 is added to the Public Resources Code, to read: 25550. (a) *Notwithstanding subdivision (a) of Section 25522, and Section 25540.6, the commission shall establish a process to issue its final certification for any solar and clean energy plant and related facilities within six months after the filing of the application for certification that, on the basis of an initial review, shows that there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical transmission and distribution system and will comply with all applicable standards, ordinances, or laws. For purposes of this section, filing has the same meaning as in Section 25522.*

(b) *Solar and clean energy plants and related facilities reviewed under this process shall satisfy the requirements of Section 25520 and other necessary information required by the commission, by regulation, including the information required for permitting by each local, state, and regional agency that would have jurisdiction over the proposed solar and clean energy plant and related facilities but for the exclusive jurisdiction of the commission and the information required for permitting by each federal agency that has jurisdiction over the proposed solar and clean energy plant and related facilities.*

(c) *After acceptance of an application under this section, the commission shall not be required to issue a six-month final decision on the application if it determines there is substantial evidence in the record that the solar and clean energy plant and related facilities will likely result in a significant adverse impact on the environment or electrical system or does not comply with an applicable standard, ordinance, or law. Under this circumstance, the commission shall make its decision in accordance with subdivision (a) of Section 25522 and Section 25540.6, and a new application shall not be required.*

(d) *For an application that the commission accepts under this section, all local, regional, and state agencies that would have had jurisdiction over the proposed solar and clean energy plant and related facilities, but for the exclusive jurisdiction of the commission, shall provide their final comments, determinations, or opinions within 100 days after the filing of the application. The regional water quality control boards, as established pursuant to Chapter 4 (commencing with Section 13200) of Division 7 of the Water Code, shall retain jurisdiction over any applicable water quality standard that is incorporated into any final certification issued pursuant to this chapter.*

(e) *Applicants of solar and clean energy plants and related facilities that demonstrate superior environmental or efficiency performance shall receive priority in review.*

(f) *With respect to a solar and clean energy plant and related facilities reviewed under the process established by this section, it shall be shown that the applicant has a contract with a general contractor and has contracted for an adequate supply of skilled labor to construct, operate, and maintain the plant.*

(g) *With respect to a solar and clean energy plant and related facilities reviewed under the process established by this section, it shall be shown that the solar and clean energy plant and related facilities complies with all regulations adopted by the commission that ensure that an application addresses disproportionate impacts in a manner consistent with Section 65040.12 of the Government Code.*

(h) *This section shall not apply to an application filed with the commission on or before January 1, 2009.*

(i) *To implement this section, the commission may adopt emergency*

*regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 2 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including without limitation, Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.*

(j) *All solar and clean energy plants receiving certification pursuant to this section shall be considered a public works project subject to the provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, and the Department of Industrial Relations shall have the same authority and responsibility to enforce those provisions as it has under the Labor Code.*

SEC. 24. Chapter 6.6 (commencing with Section 25560) is added to Division 15 of the Public Resources Code, to read:

25560. *No electrical corporation as defined in Section 218 of the Public Utilities Code shall begin the construction of a transmission line or of any extension, modification, or upgrade thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.*

*This chapter shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations, or for an extension into territory either within or without a city or city and county contiguous to its transmission line or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business. If any public utility, in constructing or extending its line or system, interferes or is about to interfere with the operation of the line or system of any other public utility or of the water system of a public agency, already constructed, the commission, on complaint of the public utility or public agency claiming to be injuriously affected, may, after hearing, and in consultation with the Public Utilities Commission make such order and prescribe such terms and conditions for the location of the lines or systems affected as to it may seem just and reasonable.*

25561. (a) *The commission shall exempt the construction of any line or system, or extension thereof, located outside the boundaries of the state from the requirements of Section 25560, upon the application of the public utility constructing that line or system, or extension thereof, if the public utility derives 75 percent or more of its operating revenues from outside the state, as recorded in the fiscal period immediately before the filing of the application, unless the commission determines that the public interest requires that the construction should not be exempt from Section 25560.*

(b) *Except as provided in subdivision (c), the commission shall make the determination denying the exemption, as specified in subdivision (a), within 90 days after the public utility files the application for exemption with the commission. If the commission fails to make this determination within that 90-day period, the construction of that line or system, or extension thereof, is exempt from the requirements of Section 25560.*

(c) *The commission and the public utility filing the application for exemption may, if both agree, extend the time period within which the commission is required to make the determination denying the exemption, for not more than an additional 60 days after the expiration of the 90-day period specified in subdivision (b).*

25562. (a) *The commission, as a basis for granting any certificate pursuant to Section 25560, shall give consideration to the following factors:*

(1) *Community values.*

(2) *Recreational and park areas.*

(3) *Historical and aesthetic values.*

(4) *Influence on environment, except that in the case of any line or system or extension thereof located in another state which will be subject to environmental review pursuant to the National Environmental Policy Act of 1969 (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) or similar state laws in the other state, the commission shall not consider influence on the environment unless any emissions or discharges therefrom would have a significant influence on the environment of this state.*

(5) *Proximity to and related effect on populated areas and whether alternative locations are reasonably available and appropriate.*

(6) *Value and benefits of baseload generation.*

(b) *With respect to any electrical transmission line required to be constructed, modified, or upgraded to provide transmission from a thermal powerplant or a solar and clean energy plant, and for which a certificate is required pursuant to the provisions of Division 15 (commencing with Section*

25000), the decision granting such other certificate shall be conclusive as to all matters determined thereby and shall take the place of the requirement for consideration by the commission of the six factors specified in subdivision (a) of this section.

(c) As a condition for granting any certificate pursuant to Section 25560, the commission shall require compliance with the California Desert Protection Act of 1994 (commencing with Section 410aaa of Title 16 of the United States Code).

25563. In considering an application for a certificate for an electric transmission facility pursuant to Section 25560, the commission shall consider cost-effective alternatives to transmission facilities that meet the need for an efficient, reliable, and affordable supply of electricity, including, but not limited to, demand-side alternatives such as targeted energy efficiency, ultraclean distributed generation, as defined in Section 353.2 of the Public Utilities Code, and other demand reduction resources. The provisions of this section shall not apply to any electrical transmission line required to be constructed, modified, or upgraded to provide transmission from a solar and clean energy plant.

25564. Every electrical corporation submitting an application to the commission for a certificate authorizing the new construction of any electric transmission line or extension, not subject to the provisions of Chapter 6 (commencing with Section 25500), shall include all of the following information in the application in addition to any other required information:

(a) Preliminary engineering and design information on the project. The design information provided shall include preliminary data regarding the operating characteristics of the line or extension.

(b) A project implementation plan showing how the project would be contracted for and constructed. This plan shall show how all major tasks would be integrated and shall include a timetable identifying the design, construction, completion, and operation dates for each major component of the line or extension.

(c) An appropriate cost estimate, including preliminary estimates of the costs of financing, construction, and operation of the line or extension.

(d) The corporation shall demonstrate the financial impact of the line or extension construction on the corporation's ratepayers, stockholders, and on the cost of the corporation's borrowed capital. The cost analyses shall be performed for the projected useful life of the line or extension.

(e) A design and construction management and cost control plan which indicates the contractual and working responsibilities and interrelationships between the corporation's management and other major parties involved in the project. This plan shall also include a construction progress information system and specific cost controls.

25565. Every electrical corporation submitting an application to the commission for a certificate authorizing the new construction of an electric transmission line or extension, which is subject to the provisions of Chapter 6 (commencing with Section 25500), shall include in the application the information specified in subdivisions (b), (c), and (e) of Section 25564, in addition to any other required information. The corporation may also include in the application any other information specified in Section 25564.

25566. Before any certificate may issue under this chapter, every applicant for a certificate shall file in the office of the commission a certified copy of the applicant's articles of incorporation or charter. Every applicant for a certificate shall file in the office of the commission such evidence as is required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper county, city and county, city, or other public authority.

25567. (a) The commission may, with or without hearing, issue the certificate as requested for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated electric transmission line or extension thereof, or for the partial exercise only of the right or privilege, and may attach to the exercise of the rights granted by the certificate such terms and conditions, including provisions for the acquisition by the public of the franchise or permit and all rights acquired thereunder and all works constructed or maintained by authority thereof, as in its judgment the public convenience and necessity require; provided, however, that before issuing or refusing to issue the certificate, the commission shall hold one or more hearings addressing any issues raised in a timely application for a hearing by any person entitled to be heard.

(b) When the commission issues a certificate for the new construction of an electric transmission line or extension, the certificate shall specify the operating and cost characteristics of the transmission line or extension, including, but not limited to, the size, capacity, cost, and all other characteristics

of the transmission line or extension which are specified in the information which the electrical corporations are required to submit, pursuant to Section 25564 or 25565.

(c) Notwithstanding any other provision in this chapter, an application for a certificate authorizing the construction of new transmission facilities shall be deemed to be necessary to the provision of electric service for purposes of any determination made under Section 25564 if the commission finds that the new facility is necessary to facilitate achievement of the renewables portfolio standard as established in Article 16 (commencing with Section 399.11) of the Public Utilities Code and the eligible renewable energy resources requirement as established in Chapter 8.6 (commencing with Section 25740) of this division.

25568. (a) Whenever the commission issues to an electrical corporation a certificate authorizing the new construction of a transmission line, or of any extension, modification, or upgrade thereof estimated to cost greater than fifty million dollars (\$50,000,000), the commission shall specify in the certificate a maximum cost determined to be reasonable and prudent for the facility. The commission shall determine the maximum cost using an estimate of the anticipated construction cost, taking into consideration the design of the project, the expected duration of construction, an estimate of the effects of economic inflation, and any known engineering difficulties associated with the project.

(b) After the certificate has been issued, the corporation may apply to the commission for an increase in the maximum cost specified in the certificate. The commission may authorize an increase in the specified maximum cost if it finds and determines that the cost has in fact increased and that the present or future public convenience and necessity require construction of the project at the increased cost; otherwise, it shall deny the application.

(c) After construction has commenced, the corporation may apply to the commission for authorization to discontinue construction. After a showing to the satisfaction of the commission that the present or future public convenience and necessity no longer require the completion of construction of the project, and that the construction costs incurred were reasonable and prudent, the commission may authorize discontinuance of construction and the Public Utilities Commission may authorize recovery of those construction costs which the commission determines were reasonable and prudent.

(d) In any decision by the Public Utilities Commission establishing rates for an electrical corporation reflecting the reasonable and prudent costs of the new construction of any transmission line, or of any extension, modification, or upgrade thereof, when the commission has found and determined that the addition or extension is used and useful, the Public Utilities Commission shall consider whether or not the actual costs of construction are within the maximum cost specified by the commission.

SEC. 25. Section 25740 of the Public Resources Code is amended to read:

25740. It is the intent of the Legislature people in establishing this program, to address global warming and climate change, and protect the endangered Sierra snowcaps by increasing ~~increase~~ the amount of electricity generated from eligible renewable energy resources per year, so that it equals at least 20 percent of total retail sales of electricity in California per year by December 31, 2010, at least 40 percent of total retail sales of electricity in California per year by December 31, 2020, and at least 50 percent of total retail sales of electricity in California per year by December 31, 2025.

SEC. 26. Section 25740.1 is added to the Public Resources Code, to read:

25740.1. The people find that the construction of electric transmission facilities necessary to facilitate the achievement of California's renewables portfolio standard targets will provide the maximum economic benefit to all customer classes that funded the New Renewable Resources Account.

SEC. 27. Section 25743 of the Public Resources Code is amended to read:

25743. (a) The commission shall terminate all production incentives awarded from the New Renewable Resources Account prior to January 1, 2002, unless the project began generating electricity by January 1, 2007.

(b) (1) The commission shall, by March 1, 2008, transfer to electrical corporations serving customers subject to the renewable energy public goods charge the remaining unencumbered funds in the New Renewable Resources Account.

(2) The Public Utilities Commission shall ensure that each electrical corporation allocates funds received from the commission pursuant to paragraph (1) in a manner that maximizes the economic benefit to all customer classes that funded the New Renewable Resources Account. In considering and approving each electrical corporation's proposed allocations, and

consistent with Section 25740.1, the Public Utilities Commission shall encourage and give the highest priority to allocations for the construction of, or payment to supplement the construction of, any new or modified electric transmission facilities necessary to facilitate the state achieving its renewables portfolio standard targets.

(c) All projects receiving funding, in whole or in part, pursuant to this section shall be considered public works projects subject to the provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, and the Department of Industrial Relations shall have the same authority and responsibility to enforce those provisions as it has under the Labor Code.

SEC. 28. Section 25745 is added to the Public Resources Code, to read:

25745. The Energy Commission shall use its best efforts to attract and encourage investment in solar and clean energy resources, facilities, research and development from companies based in the United States to fulfill the purposes of this chapter.

SEC. 29. Section 25751.5 is added to the Public Resources Code, to read:

25751.5. (a) The Solar and Clean Energy Transmission Account is hereby established within the Renewable Resources Trust Fund.

(b) Beginning January 1, 2009, the total annual adjustments adopted pursuant to subdivision (d) of Section 399.8 of the Public Utilities Code shall be allocated to the Solar and Clean Energy Transmission Account.

(c) Funds in the Solar and Clean Energy Transmission Account shall be used, in whole or in part, for the following purposes:

(1) The purchase of property or right-of-way pursuant to the commission's authority under Chapter 8.9 (commencing with Section 25790).

(2) The construction of, or payment to supplement the construction of, any new or modified electric transmission facilities necessary to facilitate the state achieving its renewables portfolio standard targets.

(d) Title to any property or project paid for in whole pursuant to this section shall vest with the commission. Title to any property or project paid for in part pursuant to this section shall vest with the commission in a part proportionate to the commission's share of the overall cost of the property or project.

(e) Funds deposited in the Solar and Clean Energy Transmission Account shall be used to supplement, and not to supplant, existing state funding for the purposes authorized by subdivision (c).

(f) All projects receiving funding, in whole or in part, pursuant to this section shall be considered public works projects subject to the provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, and the Department of Industrial Relations shall have the same authority and responsibility to enforce those provisions as it has under the Labor Code.

SEC. 30. Chapter 8.9 (commencing with Section 25790) is added to Division 15 of the Public Resources Code, to read:

25790. The Energy Commission may, for the purposes of this chapter, purchase and subsequently sell, lease to another party for a period not to exceed 99 years, exchange, subdivide, transfer, assign, pledge, encumber, or otherwise dispose of any real or personal property or any interest in property. Any such lease or sale shall be conditioned on the development and use of the property for the generation and/or transmission of renewable energy.

25791. Any lease or sale made pursuant to this chapter may be made without public bidding but only after a public hearing.

SEC. 31. Severability

The provisions of this act are severable. If any provision of this act, or part thereof, is for any reason held to be invalid under state or federal law, the remaining provisions shall not be affected, but shall remain in full force and effect.

SEC. 32. Amendment

The provisions of this act may be amended to carry out its purpose and intent by statutes approved by a two-thirds vote of each house of the Legislature and signed by the Governor.

SEC. 33. Conflicting Measures

(a) This measure is intended to be comprehensive. It is the intent of the people that in the event that this measure and another initiative measure relating to the same subject appear on the same statewide election ballot, the provisions of the other measure or measures are deemed to be in conflict with this measure. In the event this measure shall receive the greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-

executing and given full force of law.

SEC. 34. Legal Challenge

Any challenge to the validity of this act must be filed within six months of the effective date of this act.

## PROPOSITION 8

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

SECTION 1. Title

This measure shall be known and may be cited as the "California Marriage Protection Act."

SECTION 2. Section 7.5 is added to Article I of the California Constitution, to read:

*Sec. 7.5. Only marriage between a man and a woman is valid or recognized in California.*

## PROPOSITION 9

This initiative measure is submitted to the people of California in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends a section of the California Constitution and amends and adds sections to the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

#### VICTIMS' BILL OF RIGHTS ACT OF 2008: MARSY'S LAW

SECTION 1. TITLE

This act shall be known, and may be cited as, the "Victims' Bill of Rights Act of 2008: Marsy's Law."

SECTION 2. FINDINGS AND DECLARATIONS

The People of the State of California hereby find and declare all of the following:

1. Crime victims are entitled to justice and due process. Their rights include, but are not limited to, the right to notice and to be heard during critical stages of the justice system; the right to receive restitution from the criminal wrongdoer; the right to be reasonably safe throughout the justice process; the right to expect the government to properly fund the criminal justice system, so that the rights of crime victims stated in these Findings and Declarations and justice itself are not eroded by inadequate resources; and, above all, the right to an expeditious and just punishment of the criminal wrongdoer.

2. The People of the State of California declare that the "Victims' Bill of Rights Act of 2008: Marsy's Law" is needed to remedy a justice system that fails to fully recognize and adequately enforce the rights of victims of crime. It is named after Marsy, a 21-year-old college senior at U.C. Santa Barbara who was preparing to pursue a career in special education for handicapped children and had her whole life ahead of her. She was murdered on November 30, 1983. Marsy's Law is written on behalf of her mother, father, and brother, who were often treated as though they had no rights, and inspired by hundreds of thousands of victims of crime who have experienced the additional pain and frustration of a criminal justice system that too often fails to afford victims even the most basic of rights.

3. The People of the State of California find that the "broad reform" of the criminal justice system intended to grant these basic rights mandated in the Victims' Bill of Rights initiative measure passed by the electorate as Proposition 8 in 1982 has not occurred as envisioned by the people. Victims of crime continue to be denied rights to justice and due process.

4. An inefficient, overcrowded, and arcane criminal justice system has failed to build adequate jails and prisons, has failed to efficiently conduct court proceedings, and has failed to expeditiously finalize the sentences and punishments of criminal wrongdoers. Those criminal wrongdoers are being released from custody after serving as little as 10 percent of the sentences imposed and determined to be appropriate by judges.

5. Each year hundreds of convicted murderers sentenced to serve life in prison seek release on parole from our state prisons. California's "release from prison parole procedures" torture the families of murdered victims and waste



millions of dollars each year. In California convicted murderers are appointed attorneys paid by the tax dollars of its citizens, and these convicted murderers are often given parole hearings every year. The families of murdered victims are never able to escape the seemingly unending torture and fear that the murderer of their loved one will be once again free to murder.

6. "Helter Skelter" inmates Bruce Davis and Leslie Van Houghton, two followers of Charles Manson convicted of multiple brutal murders, have had 38 parole hearings during the past 30 years.

7. Like most victims of murder, Marsy was neither rich nor famous when she was murdered by a former boyfriend who lured her from her parents' home by threatening to kill himself. Instead he used a shotgun to brutally end her life when she entered his home in an effort to stop him from killing himself. Following her murderer's arrest, Marsy's mother was shocked to meet him at a local supermarket, learning that he had been released on bail without any notice to Marsy's family and without any opportunity for her family to state their opposition to his release.

8. Several years after his conviction and sentence to "life in prison," the parole hearings for his release began. In the first parole hearing, Marsy's mother suffered a heart attack fighting against his release. Since then Marsy's family has endured the trauma of frequent parole hearings and constant anxiety that Marsy's killer would be released.

9. The experiences of Marsy's family are not unique. Thousands of other crime victims have shared the experiences of Marsy's family, caused by the failure of our criminal justice system to notify them of their rights, failure to give them notice of important hearings in the prosecutions of their criminal wrongdoers, failure to provide them with an opportunity to speak and participate, failure to impose actual and just punishment upon their wrongdoers, and failure to extend to them some measure of finality to the trauma inflicted upon them by their wrongdoers.

### SECTION 3. STATEMENT OF PURPOSES AND INTENT

It is the purpose of the People of the State of California in enacting this initiative measure to:

1. Provide victims with rights to justice and due process.
2. Invoke the rights of families of homicide victims to be spared the ordeal of prolonged and unnecessary suffering, and to stop the waste of millions of taxpayer dollars, by eliminating parole hearings in which there is no likelihood a murderer will be paroled, and to provide that a convicted murderer can receive a parole hearing no more frequently than every three years, and can be denied a follow-up parole hearing for as long as 15 years.

### SECTION 4. VICTIMS' BILL OF RIGHTS

SECTION 4.1. Section 28 of Article I of the California Constitution is amended to read:

SEC. 28. (a) The People of the State of California find and declare *all of the following*:

(1) Criminal activity has a serious impact on the citizens of California. The rights of victims of crime and their families in criminal prosecutions are a subject of grave statewide concern.

(2) Victims of crime are entitled to have the criminal justice system view criminal acts as serious threats to the safety and welfare of the people of California. ~~that the~~ The enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect protecting those rights and ensuring that crime victims are treated with respect and dignity, is a matter of grave statewide concern high public importance. California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime described herein, in order to protect the public safety and to secure justice when the public safety has been compromised by criminal activity.

(3) The rights of victims pervade the criminal justice system; ~~encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more basic expectation. These rights include personally held and enforceable rights described in paragraphs (1) through (17) of subdivision (b).~~

(4) The rights of victims also include broader shared collective rights that are held in common with all of the People of the State of California and that are enforceable through the enactment of laws and through good-faith efforts and actions of California's elected, appointed, and publicly employed officials. These rights encompass the expectation shared with all of the people of California that persons who commit felonious acts causing injury to innocent victims will be appropriately and thoroughly investigated, appropriately detained in custody, brought before the courts of California even if arrested

outside the State, tried by the courts in a timely manner, sentenced, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

(5) Victims of crime have a collectively shared right to expect that persons convicted of committing criminal acts are sufficiently punished in both the manner and the length of the sentences imposed by the courts of the State of California. This right includes the right to expect that the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights and privileges to prisoners that are not required by any provision of the United States Constitution or by the laws of this State to be granted to any person incarcerated in a penal or other custodial facility in this State as a punishment or correction for the commission of a crime.

(6) Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end.

(7) Such Finally, the People find and declare that the right to public safety extends to public and private primary, elementary, junior high, and senior high school, and community college, California State University, University of California, and private college and university campuses, where students and staff have the right to be safe and secure in their persons.

(8) To accomplish these the goals it is necessary that the laws of California relating to the criminal justice process be amended in order to protect the legitimate rights of victims of crime, ~~broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives:~~

(b) In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:

(1) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.

(2) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(3) To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.

(4) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.

(5) To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(6) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.

(7) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.

(8) To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.

(9) To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.

(10) To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

(11) To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.

(12) To be informed, upon request, of the conviction, sentence, place and

time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.

(13) To Restitution restitution.

(A) It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes for causing the losses they suffer.

(B) Restitution shall be ordered from the convicted persons wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.

(C) All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.

(14) To the prompt return of property when no longer needed as evidence.

(15) To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.

(16) To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.

(17) To be informed of the rights enumerated in paragraphs (1) through (16).

(c) (1) A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the rights enumerated in subdivision (b) in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.

(2) This section does not create any cause of action for compensation or damages against the State, any political subdivision of the State, any officer, employee, or agent of the State or of any of its political subdivisions, or any officer or employee of the court.

(d) The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims. The court in its discretion may extend the right to be heard at sentencing to any person harmed by the defendant. The parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.

(e) As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term "victim" also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term "victim" does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.

(f) In addition to the enumerated rights provided in subdivision (b) that are personally enforceable by victims as provided in subdivision (c), victims of crime have additional rights that are shared with all of the People of the State of California. These collectively held rights include, but are not limited to, the following:

(1) Right to Safe Schools. All students and staff of public primary, elementary, junior high, and senior high schools, and community colleges, colleges, and universities have the inalienable right to attend campuses which are safe, secure and peaceful.

(d) (2) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code; Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

(e) (3) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the

previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary consideration considerations.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail. However, no person charged with the commission of any serious felony shall be released on his or her own recognizance.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney and the victim shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

(f) (4) Use of Prior Convictions. Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

(5) Truth in Sentencing. Sentences that are individually imposed upon convicted criminal wrongdoers based upon the facts and circumstances surrounding their cases shall be carried out in compliance with the courts' sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities. The legislative branch shall ensure sufficient funding to adequately house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce those sentences.

(6) Reform of the parole process. The current process for parole hearings is excessive, especially in cases in which the defendant has been convicted of murder. The parole hearing process must be reformed for the benefit of crime victims.

(g) As used in this article, the term "serious felony" is any crime defined in subdivision (c) of Penal Code, Section 1192.7(e) of the Penal Code, or any successor statute.

## SECTION 5. VICTIMS' RIGHTS IN PAROLE PROCEEDINGS

SECTION 5.1. Section 3041.5 of the Penal Code is amended to read:

3041.5. (a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing, or rescinding of parole dates, the following shall apply:

(1) At least 10 days prior to any hearing by the Board of Prison Terms Parole Hearings, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his or her own behalf. Neither the prisoner nor the attorney for the prisoner shall be entitled to ask questions of any person appearing at the hearing pursuant to subdivision (b) of Section 3043.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner and any person described in subdivision (b) of Section 3043 shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner shall have rights set forth in paragraphs (3) and (4) of subdivision (c) of Section 2932.

(6) The board shall set a date to reconsider whether an inmate should be released on parole that ensures a meaningful consideration of whether the inmate is suitable for release on parole.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his or her parole date, the conditions he or she must meet in order to be released on the date set, and the consequences of failure to meet those conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated.

(3) The board shall hear each case annually thereafter, except the board may

schedule the next hearing no later than the following, after considering the views and interests of the victim, as follows:

(A) Two years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding. Fifteen years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety does not require a more lengthy period of incarceration for the prisoner than 10 additional years.

(B) Up to five years after any hearing at which parole is denied if the prisoner has been convicted of murder, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding in writing. If the board defers a hearing five years, the prisoner's central file shall be reviewed by a deputy commissioner within three years at which time the deputy commissioner may direct that a hearing be held within one year. The prisoner shall be notified in writing of the deputy commissioner's decision. The board shall adopt procedures that relate to the criteria for setting the hearing between two and five years. Ten years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety does not require a more lengthy period of incarceration for the prisoner than seven additional years.

(C) Three years, five years, or seven years after any hearing at which parole is denied, because the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety requires a more lengthy period of incarceration for the prisoner, but does not require a more lengthy period of incarceration for the prisoner than seven additional years.

(4) The board may in its discretion, after considering the views and interests of the victim, advance a hearing set pursuant to paragraph (3) to an earlier date, when a change in circumstances or new information establishes a reasonable likelihood that consideration of the public and victim's safety does not require the additional period of incarceration of the prisoner provided in paragraph (3).

(3) (5) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for that action and shall offer the prisoner an opportunity for review of that action.

(4) (6) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing within 12 months and in accordance with paragraph (2) (3).

(c) The board shall conduct a parole hearing pursuant to this section as a de novo hearing. Findings made and conclusions reached in a prior parole hearing shall be considered in but shall not be deemed to be binding upon subsequent parole hearings for an inmate, but shall be subject to reconsideration based upon changed facts and circumstances. When conducting a hearing, the board shall admit the prior recorded or memorialized testimony or statement of a victim or witness, upon request of the victim or if the victim or witness has died or become unavailable. At each hearing the board shall determine the appropriate action to be taken based on the criteria set forth in paragraph (3) of subdivision (a) of Section 3041.

(d) (1) An inmate may request that the board exercise its discretion to advance a hearing set pursuant to paragraph (3) of subdivision (b) to an earlier date, by submitting a written request to the board, with notice, upon request, and a copy to the victim which shall set forth the change in circumstances or new information that establishes a reasonable likelihood that consideration of the public safety does not require the additional period of incarceration of the inmate.

(2) The board shall have sole jurisdiction, after considering the views and interests of the victim to determine whether to grant or deny a written request made pursuant to paragraph (1), and its decision shall be subject to review by a court or magistrate only for a manifest abuse of discretion by the board. The board shall have the power to summarily deny a request that does not comply with the provisions of this subdivision or that does not set forth a change in circumstances or new information as required in paragraph (1) that in the judgment of the board is sufficient to justify the action described in paragraph (4) of subdivision (b).

(3) An inmate may make only one written request as provided in paragraph (1) during each three-year period. Following either a summary denial of a request made pursuant to paragraph (1), or the decision of the board after a hearing described in subdivision (a) to not set a parole date, the inmate shall not be entitled to submit another request for a hearing pursuant to subdivision (a) until a three-year period of time has elapsed from the summary denial or decision of the board.

SECTION 5.2. Section 3043 of the Penal Code is amended to read:

3043. (a) (1) Upon request, notice of any hearing to review or consider the parole suitability or the setting of a parole date for any prisoner in a state prison shall be sent by the Board of Prison Terms Parole Hearings at least 30 90 days before the hearing to any victim of a any crime committed by the prisoner, or to the next of kin of the victim if the victim has died, to include the commitment crimes, determinate term commitment crimes for which the prisoner has been paroled, and any other felony crimes or crimes against the person for which the prisoner has been convicted. The requesting party shall keep the board apprised of his or her current mailing address.

(2) No later than 30 days prior to the date selected for the hearing, any person, other than the victim, entitled to attend the hearing shall inform the board of his or her intention to attend the hearing and the name and identifying information of any other person entitled to attend the hearing who will accompany him or her.

(3) No later than 14 days prior to the date selected for the hearing, the board shall notify every person entitled to attend the hearing confirming the date, time, and place of the hearing.

(b) (1) The victim, next of kin, two members of the victim's immediate family, or and two representatives designated for a particular hearing by the victim or, in the event the victim is deceased or incapacitated, by the next of kin in writing prior to the hearing as provided in paragraph (2) of this subdivision have the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his, her, or their views concerning the prisoner and the case, including, but not limited to the commitment crimes, determinate term commitment crimes for which the prisoner has been paroled, any other felony crimes or crimes against the person for which the prisoner has been convicted, the effect of the enumerated crimes on the victim and the family of the victim, crime and the person responsible for these enumerated crimes, and the suitability of the prisoner for parole, except that

(2) any Any statement provided by a representative designated by the victim or next of kin may cover any subject about which the victim or next of kin has the right to be heard including any recommendation regarding the granting of parole. shall be limited to comments concerning the effect of the crime on the victim. The representatives shall be designated by the victim or, in the event that the victim is deceased or incapacitated, by the next of kin. They shall be designated in writing for the particular hearing prior to the hearing.

(c) A representative designated by the victim or the victim's next of kin for purposes of this section may be any adult person selected by the victim or the family of the victim must be either a family or household member of the victim. The board may not shall permit a representative designated by the victim or the victim's next of kin to attend a particular hearing, to provide testimony at a hearing, or and to submit a statement to be included in the hearing as provided in Section 3043.2, even though if the victim, next of kin, or a member of the victim's immediate family is present at the hearing, or if and even though the victim, next of kin, or a member of the victim's immediate family has submitted a statement as described in Section 3043.2.

(d) Nothing in this section is intended to allow the board to permit a victim's representative to attend a particular hearing if the victim, next of kin, or a member of the victim's immediate family is present at any hearing covered in this section, or if the victim, next of kin, or member of the victim's immediate family has submitted a written, audiotaped, or videotaped statement.

(e) The board, in deciding whether to release the person on parole, shall consider the entire and uninterrupted statements of the victim or victims, next of kin, immediate family members of the victim, and the designated representatives of the victim or next of kin, if applicable, made pursuant to this section and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.

In

(e) In those cases where there are more than two immediate family members of the victim who wish to attend any hearing covered in this section, the board may, in its discretion, shall allow attendance of additional immediate family members or limit attendance to the following order of preference to include the following: spouse, children, parents, siblings, grandchildren, and grandparents.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by roll-call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SECTION 5.3. Section 3044 is added to the Penal Code, to read:

3044. (a) Notwithstanding any other law, the Board of Parole Hearings or its successor in interest shall be the state's parole authority and shall be responsible for protecting victims' rights in the parole process. Accordingly, to protect a victim from harassment and abuse during the parole process, no person paroled from a California correctional facility following incarceration for an offense committed on or after the effective date of this act shall, in the event his or her parole is revoked, be entitled to procedural rights other than the following:

(1) A parolee shall be entitled to a probable cause hearing no later than 15 days following his or her arrest for violation of parole.

(2) A parolee shall be entitled to an evidentiary revocation hearing no later than 45 days following his or her arrest for violation of parole.

(3) A parolee shall, upon request, be entitled to counsel at state expense only if, considering the request on a case-by-case basis, the board or its hearing officers determine:

(A) The parolee is indigent; and

(B) Considering the complexity of the charges, the defense, or because the parolee's mental or educational capacity, he or she appears incapable of speaking effectively in his or her own defense.

(4) In the event the parolee's request for counsel, which shall be considered on a case-by-case basis, is denied, the grounds for denial shall be stated succinctly in the record.

(5) Parole revocation determinations shall be based upon a preponderance of evidence admitted at hearings including documentary evidence, direct testimony, or hearsay evidence offered by parole agents, peace officers, or a victim.

(6) Admission of the recorded or hearsay statement of a victim or percipient witness shall not be construed to create a right to confront the witness at the hearing.

(b) The board is entrusted with the safety of victims and the public and shall make its determination fairly, independently, and without bias and shall not be influenced by or weigh the state cost or burden associated with just decisions. The board must accordingly enjoy sufficient autonomy to conduct unbiased hearings, and maintain an independent legal and administrative staff. The board shall report to the Governor.

SECTION 6. NOTICE OF VICTIMS' BILL OF RIGHTS

SECTION 6.1. Section 679.026 is added to the Penal Code, to read:

679.026. (a) It is the intent of the people of the State of California in enacting this section to implement the rights of victims of crime established in Section 28 of Article I of the California Constitution to be informed of the rights of crime victims enumerated in the Constitution and in the statutes of this state.

(b) Every victim of crime has the right to receive without cost or charge a list of the rights of victims of crime recognized in Section 28 of Article I of the California Constitution. These rights shall be known as "Marsy Rights."

(c) (1) Every law enforcement agency investigating a criminal act and every agency prosecuting a criminal act shall, as provided herein, at the time of initial contact with a crime victim, during follow-up investigation, or as soon thereafter as deemed appropriate by investigating officers or prosecuting attorneys, provide or make available to each victim of the criminal act without charge or cost a "Marsy Rights" card described in paragraphs (3) and (4).

(2) The victim disclosures required under this section shall be available to the public at a state funded and maintained Web site authorized pursuant to Section 14260 of the Penal Code to be known as "Marsy's Page."

(3) The Attorney General shall design and make available in ".pdf" or other imaging format to every agency listed in paragraph (1) a "Marsy Rights" card, which shall contain the rights of crime victims described in subdivision (b) of Section 28 of Article I of the California Constitution, information on the means by which a crime victim can access the web page described in paragraph (2), and a toll-free telephone number to enable a crime victim to contact a local victim's assistance office.

(4) Every law enforcement agency which investigates criminal activity shall, if provided without cost to the agency by any organization classified as a nonprofit organization under paragraph (3) of subdivision (c) of Section 501 of the Internal Revenue Code, make available and provide to every crime victim a "Victims' Survival and Resource Guide" pamphlet and/or video that has been approved by the Attorney General. The "Victims' Survival and

Resource Guide" and video shall include an approved "Marsy Rights" card, a list of government agencies, nonprofit victims' rights groups, support groups, and local resources that assist crime victims, and any other information which the Attorney General determines might be helpful to victims of crime.

(5) Any agency described in paragraph (1) may in its discretion design and distribute to each victim of a criminal act its own Victims' Survival and Resource Guide and video, the contents of which have been approved by the Attorney General, in addition to or in lieu of the materials described in paragraph (4).

SECTION 7. CONFLICTS WITH EXISTING LAW

It is the intent of the People of the State of California in enacting this act that if any provision in this act conflicts with an existing provision of law which provides for greater rights of victims of crime, the latter provision shall apply.

SECTION 8. SEVERABILITY

If any provision of this act, or part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SECTION 9. AMENDMENTS

The statutory provisions of this act shall not be amended by the Legislature except by a statute passed in each house by roll-call vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the statutory provisions of this act to expand the scope of their application, to recognize additional rights of victims of crime, or to further the rights of victims of crime by a statute passed by a majority vote of the membership of each house.

SECTION 10. RETROACTIVITY

The provisions of this act shall apply in all matters which arise and to all proceedings held after the effective date of this act.

## PROPOSITION 10

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Public Resources Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

#### THE CALIFORNIA RENEWABLE ENERGY AND CLEAN ALTERNATIVE FUEL ACT.

SECTION 1. Title.

This measure shall be known and may be cited as "The California Renewable Energy and Clean Alternative Fuel Act."

SECTION 2. Findings and declarations.

The people of California find and declare the following:

A. California's excessive dependence on petroleum products threatens our health, our environment, our economy and our national security.

B. Transportation accounts for 40 percent of California's annual greenhouse gas emissions, and we rely on petroleum-based fuels for an overwhelming 96 percent of our transportation needs. This petroleum dependency contributes to climate change and leaves workers, consumers and businesses vulnerable to price spikes from an unstable energy market.

C. The landmark California Global Warming Solutions Act of 2006 requires California to reduce statewide greenhouse gas emissions to 1990 levels by 2020.

D. Governor Schwarzenegger has issued an executive order establishing a groundbreaking low carbon fuel standard that will reduce the carbon intensity of California's passenger vehicle fuels by at least 10 percent by 2020. This standard is expected to triple the state's renewable fuels market and put 20 times the number of alternative fuel or hybrid vehicles on our roads.

E. Government should provide public funds to meet these policy goals by creating incentives for businesses and consumers to conserve energy and use alternative energy sources.

F. A comprehensive alternative energy strategy must be implemented. This strategy should concentrate on three areas: renewable electricity generation, clean alternative fuels for transportation, and energy efficiency

and conservation.

G. A variety of clean domestic fuels are available to power automobiles, including natural gas, cellulosic ethanol, biodiesel and hydrogen.

H. Clean and renewable domestic sources of energy are available for the generation of electricity, including solar, wind, geothermal and tidal power.

I. An effective clean energy strategy must consist of short- and long-term objectives. The strategy must utilize clean energy technologies and clean alternative fuels that are commercially available while investing in clean energy technologies and fuels for the future. Emissions reduction and energy efficiency are an important component of this strategy.

J. Energy conservation will increase as the public is educated in the use of new, clean energy alternatives, such as improved computerized monitoring and control systems, energy-efficient appliances and more efficient engines for vehicles.

K. Local governments can play an important role in educating the public on the use of alternative energy by creating alternative energy demonstration projects in communities throughout California.

L. California's history of technological innovation and entrepreneurship, international leadership in promoting energy efficiency, abundance of world-leading academic institutions, and national leadership in environmental stewardship qualifies California to lead the way into an era of renewable energy and clean alternative fuels.

#### SECTION 3. Purpose and intent.

It is the intent of the people of California in enacting this measure to:

A. Invest five billion dollars (\$5,000,000,000) in projects and programs designed to enhance California's energy independence and to reduce our dependence on foreign oil, reduce greenhouse gas emissions, implement the California Global Warming Solutions Act of 2006 and improve air quality.

B. Provide incentives for the engineering, design and construction of facilities and related infrastructure for the large-scale production of electricity using renewable energy technologies, such as solar, wind, geothermal, and tidal power.

C. Provide incentives for individuals and businesses to purchase or lease and install equipment in California for the production of electrical energy utilizing renewable energy technologies.

D. Provide rebates for individuals and businesses to purchase clean alternative energy vehicles, including hybrid, plug-in hybrid and natural-gas-powered vehicles. Funds will also be provided for testing and certification of alternative fuel vehicles and research and development of low-carbon fuels.

E. Provide funds for local governments to create renewable energy demonstration projects and educational projects in their communities.

F. Provide grants to California public universities, colleges and community colleges for the purpose of training students to work with clean and renewable energy technologies.

G. Provide consumer education on the availability and use of clean and renewable energy products and services.

H. Make full use of California's resources and its capability for innovation to develop new ways to meet the state's important long-term goals: the Renewable Portfolio Standard, Control of Greenhouse Gas Emissions and Criteria Air Pollutants from Motor Vehicles and the state's petroleum reduction goals set forth in this act.

I. Ensure that the revenues from this measure are invested wisely in commercially viable technology achieving short-term and longer-term measurable results while supporting research and new technologies, and require mandatory independent audits and annual progress reports so that project administrators are accountable to the people of California.

SECTION 4. Addition of Division 16.6, commencing with Section 26410, to the Public Resources Code. Division 16.6 (commencing with Section 26410) is added to the Public Resources Code, to read:

#### DIVISION 16.6. THE CALIFORNIA RENEWABLE ENERGY AND CLEAN ALTERNATIVE FUEL ACT

##### CHAPTER 1. GENERAL PROVISIONS

26410. This division shall be known and may be cited as "The California Renewable Energy and Clean Alternative Fuel Act."

26411. Each state agency that is designated by this division to administer or expend money appropriated from the California Renewable Energy and Clean Alternative Fuel Fund accounts established pursuant to subdivision (a) of Section 26416 shall perform the following functions in addition to its other powers, duties and responsibilities:

(a) Administer and expend money in the accounts appropriated from the fund within 10 years of the effective date of this act to achieve the objectives of the act from either the proceeds of bonds or other resources of the agency or

the fund accounts. Notwithstanding the preceding, to the maximum extent permitted, reasonable efforts should be used to award the rebates provided by subdivision (a) of Section 26419 within five years of the effective date of this act. The agency shall expend any additional amounts remaining in the fund and appropriated to the agency in furtherance of the purposes of this act.

(b) Adopt milestones to measure the agency's success in meeting the goals of this act. For the purposes of this subdivision, "milestones" means interim goals prescribed by the agency that indicate the nature, level, and timing of progress expected from the implementation of this act.

(c) Ensure the completion of an annual independent financial audit of the agency's operations and issue public reports regarding the agency's activities, including without limitation the expenditures and programs authorized in accordance with this act.

(d) Notwithstanding Section 11005 of the Government Code, accept additional revenue and real and personal property, including, but not limited, to gifts, bequests, royalties, interest, and appropriations to supplement the agency's funding. Notwithstanding Chapter 5 (commencing with Section 26426), donors may earmark gifts for any particular purpose authorized by this act.

(e) Apply for federal matching funds where possible.

(f) Establish standards requiring that all research grants made pursuant to this act shall be subject to intellectual property agreements that balance the opportunity of the State of California to benefit from the patents, royalties, and licenses that result from the research with the need to ensure that such research is not unreasonably hindered by those intellectual property agreements.

(g) Establish procedures, standards, and forms for the oversight of the agency's award of incentives including, but not limited to, grants, loans, loan guarantees, credits, buydowns, and rebates made under this act to ensure compliance with all applicable terms and requirements. The standards shall include periodic reporting, including financial and performance audits, to ensure the purposes of this act are being met.

(h) Adopt regulations pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) as necessary to implement this act.

##### CHAPTER 2. DEFINITIONS

26412. As used in this act, the following terms have the following meanings:

(a) "Buydown" means a cash payment to individual consumers and entities for the purchase of equipment for the production of electrical energy utilizing renewable energy technologies.

(b) "Clean alternative fuel" means natural gas and any fuel that achieves a reduction of at least 10 percent carbon intensity as contained in Governor Schwarzenegger's Executive Order S-01-07.

(c) "Clean alternative fuel vehicle" means a vehicle produced by an original equipment manufacturer or a small volume manufacturer that is powered by a clean alternative fuel and has the ability to meet applicable vehicular emission standards, that, relative to petroleum use, produces no net material increase in air pollution (including global warming emissions and air quality pollutants), water pollution, or any other substances that are known to damage human health, and that meets all applicable safety certifications and standards necessary to operate in California.

(d) "Dedicated clean alternative fuel vehicle" means a clean alternative fuel vehicle, as defined in subdivision (c), that is powered exclusively by biomethane, electricity, hydrogen, natural gas, or propane, or any combination thereof, but which may use no more than 10 percent of diesel for the primary purpose of ignition in a diesel compression cycle engine.

(e) "Energy efficiency technologies" means methods of obtaining greater benefits using less energy, compared with typical current practices in California.

(f) "Full fuel cycle assessment," also known as a "well-to-wheels analysis," means an evaluation and comparison of the full environmental and health impacts of each step in the life cycle of a fuel, including, but not limited to, all of the following:

(1) Feedstock production, extraction, transport, and storage.

(2) Fuel production, distribution, transport, and storage.

(3) Vehicle operation, including refueling, combustion, or conversion, and evaporation.

(g) "Fund" means the California Renewable Energy and Clean Alternative Fuel Fund established by Section 26413.

(h) "Heavy-duty vehicle" means a vehicle of 25,000 or more pounds in gross vehicle weight.

(i) "Heavy-medium-duty vehicle" means a vehicle of 14,000 pounds or

more in gross vehicle weight and less than 25,000 pounds in gross vehicle weight.

(j) "High fuel economy vehicle" means a light-duty vehicle produced by an original equipment manufacturer or a small volume manufacturer that can achieve a combined fuel economy of not less than 45 miles per gallon for highway use as determined by the United States Environmental Protection Agency and that meets the criteria air emission standards of the State Air Resources Board.

(k) "Light-duty vehicle" means a vehicle less than 8,500 pounds in gross vehicle weight that is authorized to be operated on all roads and highways in California.

(l) "Light-medium-duty vehicle" means a vehicle of 8,500 pounds or more in gross vehicle weight and less than 14,000 pounds in gross vehicle weight.

(m) "Original purchaser" means an individual or entity that purchases a new home clean alternative fuel refueling system or an individual consumer or private (non-governmental) entity that purchases a new or repowered clean alternative fuel vehicle produced by an original equipment manufacturer or a small volume manufacturer that is certified by the State Air Resources Board. An original purchaser for purposes of a rebate in connection with a new or repowered clean alternative fuel vehicle under Section 26419 shall include a lessee of a vehicle with a lease term of not less than 24 months.

(n) "Petroleum reduction" means methods of reducing total petroleum use in California either through increased energy efficiency, clean alternative fuels, or a combination of both.

(o) "Rebate" means a cash payment to an original purchaser of a clean alternative fuel vehicle, a dedicated clean alternative fuel vehicle, a high fuel economy vehicle, a very high fuel economy vehicle, or a home clean alternative fuel refueling system pursuant to Section 26419.

(p) "Renewable energy technologies" means energy production techniques, products, or systems, distribution techniques, products, or systems and transportation machinery, products, or systems, all of which solely utilize energy resources that are naturally regenerated over a short time period and delivered directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower facilities, and photosynthetic energy stored in biomass), or from other natural movements or mechanisms of the environment, such as geothermal, wave, and tidal energy.

(q) "Repowered" means a new or used vehicle that is modified to operate on a system certified by the State Air Resources Board and is powered by a dedicated clean alternative fuel and is produced by an original equipment manufacturer or a small volume manufacturer that is certified by the State Air Resources Board.

(r) "Very high fuel economy vehicle" means a light-duty vehicle produced by an original equipment manufacturer or a small volume manufacturer that can achieve a combined fuel economy of not less than 60 miles per gallon for highway use as determined by the United States Environmental Protection Agency and that meets the criteria air emission standards of the State Air Resources Board.

#### CHAPTER 3. CALIFORNIA RENEWABLE ENERGY AND CLEAN ALTERNATIVE FUEL FUND

26413. The California Renewable Energy and Clean Alternative Fuel Fund is hereby created.

26414. All money deposited into the fund shall be used only for the purposes and in the amounts set forth in this division and for no other purpose.

26415. Except as otherwise expressly provided in this division, upon a finding by the state agency designated by this division to administer or expend money appropriated from the fund that a particular project or program for which money had been allocated or granted cannot be completed, or that the amount that was appropriated, allocated, or granted is in excess of the total amount needed, each such state agency may reappropriate the money for other high-priority needs consistent with this division.

#### CHAPTER 4. ALLOCATION OF FUNDS

26416. (a) Funds in the California Renewable Energy and Clean Alternative Fuel Fund shall be allocated as follows:

(1) One billion two hundred fifty million dollars (\$1,250,000,000) shall be allocated to the Solar, Wind, and Renewable Energy Account, which is hereby created in the fund.

(2) Three billion four hundred twenty-five million dollars (\$3,425,000,000) shall be allocated to the Clean Alternative Fuels Account, which is hereby created in the fund.

(3) Two hundred million dollars (\$200,000,000) shall be allocated to the

Demonstration Projects and Public Education Account, which is hereby created in the fund.

(4) One hundred twenty-five million dollars (\$125,000,000) shall be allocated to the Education, Training, and Outreach Account, which is hereby created in the fund.

(b) Any funds allocated to the accounts established by subdivision (a) that are not encumbered or expended in any fiscal year shall remain in the same account for the next fiscal year.

(c) Money deposited in the accounts of the fund created in subdivision (a) shall, to the maximum extent permitted, be used to supplement, and not to supplant, existing state funding for research, technological development, vocational training and deployment involving renewable energy, clean alternative fuels, and energy efficiency.

(d) Not more than 1 percent of the funds in each account may be expended for the purpose of administering the implementation of the act.

26417. Based on the standards set forth in Section 26418, the funds in the Solar, Wind, and Renewable Energy Account shall be appropriated and expended by the State Energy Resources Conservation and Development Commission for the primary purpose of developing solar, wind, and other means of electrical energy generation using renewable sources to displace traditional generation sources, for the following categories of expenditures:

(a) The sum of two hundred fifty million dollars (\$250,000,000) shall be awarded for market-based incentives, including, but not limited to, conventional, low and zero interest loans, loan guarantees, credits, buydowns and grants, for the purchase or lease and installation of equipment in California for the production of electrical energy utilizing renewable energy technologies, such as solar, wind, geothermal, wave, and tidal power.

(b) The sum of one billion dollars (\$1,000,000,000) shall be awarded for grants and other incentives for the research, development, construction, and production of advanced renewable electric generation technology for the purpose of reducing the cost and greenhouse gas content of California's in-state electric generation sources and to contribute to the state's greenhouse gas reduction targets. For purposes of this subdivision, "advanced technologies" means technological advancements in electric generation or storage capacities that have the potential to significantly reduce greenhouse gas emissions in a cost-effective manner, relative to current technologies. "Advanced technologies" include, but are not limited to, large-scale solar thermal, solar voltaic, energy storage, biogas, wave, and tidal current. For purposes of this subdivision, "energy storage" and "storage technologies" means technologies that allow electricity produced by renewable sources during off-peak electric demand hours and utilized during peak electric demand hours.

26418. Standards for Solar, Wind, and Renewable Energy Account Expenditures.

(a) The State Energy Resources Conservation and Development Commission shall make expenditures pursuant to Section 26417 consistent with the goal of improving the economic viability and accelerating the commercialization of renewable electrical energy resources, such as solar, wind, geothermal, wave, and tidal current.

(b) Funding priority shall be given to proposals that utilize solar technology for the production of electrical energy, and not less than 80 percent of the total amount deposited in this account shall be used for such solar technology. Thereafter, priority shall be given to proposals that utilize more abundant renewable electrical energy resources, that offer the greatest potential for technological breakthroughs, and that minimize variable and fixed rate costs.

(c) All expenditures made pursuant to subdivision (b) of Section 26417 shall be based upon a competitive selection process established by the State Energy Resources Conservation and Development Commission. The commission shall, at a minimum:

(1) Ensure that the expenditure is for research in renewable electrical energy technologies or electrical energy efficiency technologies.

(2) Ensure, to the maximum extent permitted, that the expenditure does not supplant funds authorized or appropriated by the Legislature pursuant to Article 11 (commencing with Section 44125) of Chapter 5 of, and Chapter 8.9 (commencing with Section 44270) of, Part 5 of Division 26 of the Health and Safety Code.

(3) Evaluate the quality of the research proposal, the potential for achieving significant results, including consideration of how the expenditure will aid or result in the commercialization, or significant and permanent deployment, of renewable electrical energy technologies and resources, and the time frame for achieving that goal.

(4) Ensure that the expenditure is consistent with any applicable strategic



plan adopted by the State Energy Resources Conservation and Development Commission.

(d) All expenditures made pursuant to subdivision (a) of Section 26417 shall be in accordance with procedures, standards and forms adopted by the State Energy Resources Conservation and Development Commission to substantiate and verify the award of incentives.

26419. Based on the standards set forth in Section 26420, the funds in the Clean Alternative Fuels Account shall be appropriated and expended for the primary purposes of improving air quality, decreasing greenhouse gas emissions, and reducing dependence on foreign oil, for the following categories of expenditures:

(a) Two billion eight hundred seventy-five million dollars (\$2,875,000,000) shall be allocated to the Alternative Fuel Vehicle Rebate Subaccount hereby established in the Clean Alternative Fuels Account, and expended as rebates pursuant to, and in accordance with, subdivision (a) of Section 26420, as follows:

(1) The sum of two thousand dollars (\$2,000) to the original purchaser of any new high fuel economy vehicle. One hundred ten million dollars (\$110,000,000) shall be allocated for this purpose.

(2) The sum of four thousand dollars (\$4,000) to the original purchaser of any new very-high-fuel-economy vehicle. Two hundred thirty million dollars (\$230,000,000) shall be allocated for this purpose.

(3) The sum of ten thousand dollars (\$10,000) to the original purchaser of any new or repowered light-duty dedicated clean alternative fuel vehicle. Five hundred fifty million dollars (\$550,000,000) shall be allocated for this purpose.

(4) The sum of twenty-five thousand dollars (\$25,000) to the first 5,000 original purchasers of any new or repowered light-medium-duty dedicated clean alternative fuel vehicle, and the sum of fifteen thousand dollars (\$15,000) to subsequent original purchasers of such vehicles. The first 5,000 original purchasers shall be determined by the State Board of Equalization based on the date and time of its receipt of requests for rebates. Three hundred ten million dollars (\$310,000,000) shall be allocated for this purpose.

(5) The sum of thirty-five thousand dollars (\$35,000) to the first 10,000 original purchasers of any new or repowered heavy-medium-duty dedicated clean alternative fuel vehicle, and the sum of twenty-five thousand dollars (\$25,000) to subsequent original purchasers of such vehicles. The first 10,000 original purchasers shall be determined by the State Board of Equalization based on the date and time of its receipt of requests for rebates. Six hundred fifty million dollars (\$650,000,000) shall be allocated for this purpose.

(6) The sum of fifty thousand dollars (\$50,000) to the first 5,000 original purchasers of any new or repowered heavy-duty dedicated clean alternative fuel vehicle, the sum of forty thousand dollars (\$40,000) to the subsequent 5,000 original purchasers of such vehicles, and the sum of thirty thousand dollars (\$30,000) to each subsequent original purchaser of such vehicles. The first 5,000 original purchasers and the subsequent 5,000 original purchasers shall be determined by the State Board of Equalization based on the date and time of its receipt of requests for rebates. One billion dollars (\$1,000,000,000) shall be allocated for this purpose.

(7) The sum of two thousand dollars (\$2,000) to the original purchaser of any new clean alternative fuel home refueling appliance. Each purchaser must demonstrate ownership of a clean alternative fuel vehicle utilizing such appliance. Twenty-five million dollars (\$25,000,000) shall be allocated to this category.

(b) Five hundred fifty million dollars (\$550,000,000) shall be allocated to a Clean Alternative Fuel Research, Development, and Demonstration Program Subaccount, hereby established in the Clean Alternative Fuel Research, Development, and Demonstration Program, to be administered and expended by the State Air Resources Board as follows:

(1) The sum of one hundred million dollars (\$100,000,000) shall be available for incentives, including, but not limited to, conventional, low and zero interest loans, loan guarantees, credits, and grants, for the development or demonstration, or both, of dedicated clean alternative fuel vehicles in California and, in addition, those vehicles that combine clean alternative fuels and high efficiency vehicle technology.

(2) The sum of four hundred million dollars (\$400,000,000) shall be available as incentives to support research and development for technologies of efficient and cost-effective production of liquid and gaseous low-carbon and non-carbon fuels. Of this sum, two hundred million dollars (\$200,000,000) shall be available for liquid low-carbon and non-carbon fuel development, and two hundred million dollars (\$200,000,000) shall be available for gaseous low-carbon and non-carbon fuel development.

(3) The sum of fifty million dollars (\$50,000,000) shall be available for incentives, including, but not limited to, conventional, low and zero interest loans, loan guarantees, credits, and grants for reasonable costs associated with the testing and certification of dedicated clean alternative fuel vehicles.

26420. Standards for Clean Alternative Fuels Account Expenditures.

(a) The rebates authorized pursuant to subdivision (a) of Section 26419 shall be implemented in the following manner:

(1) Rebates shall be paid only after funds have been allocated to the Alternative Fuel Vehicle Rebate Subaccount. Notwithstanding the foregoing, qualifying purchases or leases from and after January 1, 2009, shall be eligible to receive rebates promptly after funds have been allocated to the Alternative Fuel Vehicle Rebate Subaccount.

(2) The licensed dealer of a vehicle eligible for a rebate is required, prior to the time of purchase or lease, to provide written notification to the original purchaser of such eligibility and the options, steps, and requirements to obtain the rebate.

(3) An original purchaser entitled to a rebate may either obtain the full amount of the rebate from the State Board of Equalization or, with the written consent of the licensed dealer of the vehicle at the time of purchase or lease, assign the right to receive the rebate to the dealer.

(4) An original purchaser or the original purchaser's assignee electing to obtain the rebate from the State Board of Equalization shall submit proof of residency, proof of purchase or lease, proof that the vehicle is eligible for the rebate and proof of vehicle registration in California. The State Board of Equalization shall adopt such regulations and forms as deemed necessary to administer this provision.

(5) In the event a licensed dealer agrees at the time of purchase or lease to accept the original purchaser's assignment of the right to receive the rebate, the dealer shall notify the State Board of Equalization at the same time the dealer reports the sale or lease to the State Board of Equalization for the purpose of transmitting the sales or use tax owed by the original purchaser. Within five business days of its receipt of the report of sale or lease, the State Board of Equalization shall remit the amount of the rebate to the dealer or credit the dealer's tax prepayment account. The State Board of Equalization shall adopt such forms as necessary to administer and further implement this provision.

(6) The State Board of Equalization shall calculate the sales or use tax applicable to the sale or lease of a vehicle at the full purchase or lease price of the vehicle without regard to any possible rebate under subdivision (a) of Section 26419.

(7) Only one rebate pursuant to subdivision (a) of Section 26419 shall be allowed for a specific vehicle.

(b) For expenditures pursuant to subdivision (b) of Section 26419, the State Air Resources Board shall make expenditures consistent with the goal of reducing the rate of petroleum consumption, and causing permanent and long-term reductions in petroleum consumption in California by not less than 20 percent by 2020 and not less than 30 percent by 2030. In addition, such expenditures shall be based upon a competitive selection process established by the State Air Resources Board. The board shall, at a minimum:

(1) Ensure, to the maximum extent permitted, that the expenditure does not supplant, but supplements, existing state funding for the reduction of petroleum consumption in California.

(2) Ensure, to the maximum extent permitted, that the expenditure does not supplant funds authorized or appropriated by the Legislature pursuant to Article 11 (commencing with Section 44125) of Chapter 5 of, and Chapter 8.9 (commencing with Section 44270) of, Part 5 of Division 26 of the Health and Safety Code.

(3) Evaluate the quality of the proposal for funding, including the availability of private matching funds, and the potential for achieving significant results, including the level of petroleum reduction within the state that is expected to be achieved as a result of the expenditure. Proposals with significant business validation and leverage from private equity funding or subordinate debt funding from private sources shall be prioritized and given preference to establish the market viability of the proposals.

(4) Evaluate the probability that the proposal will result in a sustained, unsubsidized market-competitive technology or technologies that can achieve substantial consumer or business acceptance beyond the subsidy or incentive period.

(5) Ensure that the expenditure is consistent with any applicable strategic plan adopted by the State Air Resources Board.

26421. Based on the standards in Section 26422, the funds in the Demonstration Projects and Public Education Account shall be administered

and expended by the State Energy Resources Conservation and Development Commission for grants in the following amounts to the following local governments for the purpose of capital projects and operating expenses promoting and demonstrating the actual use of alternative and renewable energy in park, recreation, and cultural venues, including the education of students, residents, and the visiting public about these technologies and practices.

(a) The sum of twenty-five million dollars (\$25,000,000) shall be available to the City of Los Angeles.

(b) The sum of twenty-five million dollars (\$25,000,000) shall be available to the City of San Diego.

(c) The sum of twenty-five million dollars (\$25,000,000) shall be available to the City of Long Beach.

(d) The sum of twenty-five million dollars (\$25,000,000) shall be available to the City of Irvine.

(e) The sum of twenty-five million dollars (\$25,000,000) shall be available to the City and County of San Francisco.

(f) The sum of twenty-five million dollars (\$25,000,000) shall be available to the City of Oakland.

(g) The sum of twenty-five million dollars (\$25,000,000) shall be available to the City of Fresno.

(h) The sum of twenty-five million dollars (\$25,000,000) shall be available to the City of Sacramento.

26422. Standards for Demonstration Projects and Public Education Account Expenditures:

(a) The State Energy Resources Conservation and Development Commission shall allocate funds to each public entity identified in Section 26421 upon the entity's submittal and the commission's approval of a proposed capital project and/or operating expense program that complies with and conforms to the purpose specified in Section 26421.

(b) All projects and programs proposed by each public entity identified in Section 26421 shall comply with state content standards for educational programs that serve children in kindergarten and grades 1 to 12, inclusive.

26423. Based on the standards in Section 26424, the funds in the Education, Training, and Outreach Account shall be appropriated and expended by the State Energy Resources Conservation and Development Commission for the following purposes:

(a) Make grants to California public universities, colleges, and community colleges for:

(1) Staff development, training grants, and research to train students to work with and to improve the economic viability and accelerate the commercialization of renewable energy technologies, energy efficiency technologies, and clean alternative fuels in buildings, equipment, electricity generation, and vehicles.

(2) Tuition assistance for low-income students and former fossil fuel energy workers and certified vehicle mechanics to obtain training to work with renewable energy technologies, such as solar, geothermal, wind, wave, and tidal technologies, clean alternative fuels, and energy efficiency technologies, in buildings, equipment, electricity generation, and vehicles.

(b) The sum of twenty-five million dollars (\$25,000,000) shall be available for outreach to provide public information concerning the importance, availability, and accessibility of clean alternative fuels and clean alternative fuel vehicles, energy efficiency devices and technologies, and renewable energy technologies.

(c) Such other programs as may be determined by the State Energy Resources Conservation and Development Commission to advance the purpose and intent of this act consistent with its stated goals and objectives.

26424. Standards for Education, Training, and Outreach Account Expenditures.

(a) The State Energy Resources Conservation and Development Commission shall make expenditures pursuant to Section 26423 consistent with the goals of training students to work with renewable energy technologies, such as solar, geothermal, wind, wave, and tidal power technologies, or energy efficiency technologies, in buildings, equipment, electricity generation, clean alternative fuels, and clean alternative fuel vehicles.

(b) All expenditures made pursuant to Section 26423 shall, as deemed necessary or appropriate by the State Energy Resources Conservation and Development Commission, be based upon a competitive selection process established by the State Energy Resources Conservation and Development Commission.

26425. The Legislature shall enact such legislation as is necessary, if any, to implement this chapter.

#### CHAPTER 5. FISCAL PROVISIONS

26426. Bonds in the total amount of five billion dollars (\$5,000,000,000), not including the amount of any refunding bonds issued in accordance with Section 26435, or so much thereof as is necessary, may be issued and sold to be used for carrying out the purposes set forth in this division and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code.

26427. The bond proceeds shall be deposited into the California Renewable Energy and Clean Alternative Fuel Fund created by Section 26413. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of and interest on the bonds as they become due and payable.

26428. The bonds authorized by this division shall be prepared, executed, issued, sold, paid and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all provisions of that law shall apply to the bonds and to this division; provided, however, that the limitations set forth in Section 16727 of the Government Code shall not apply to the bonds and to this division.

26429. (a) Solely for purposes of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this division, the California Renewable Energy and Clean Alternative Fuel Finance Committee is hereby created. For purposes of this division, the California Renewable Energy and Clean Alternative Fuel Finance Committee is "the committee" as that term is defined and used by the State General Obligation Bond Law. The committee shall consist of the Controller, the Director of Finance, and the Treasurer, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) For the purposes of this chapter, the Secretary of the Resources Agency shall be "the board" as that term is defined and used by the State General Obligation Bond Law.

26430. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this division in order to carry out the actions specified in this division and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time. The committee shall, to the maximum extent permitted, give priority to the issuance and sale of bonds necessary to allocate funds to the Alternative Fuel Vehicle Rebate Subaccount established in subdivision (a) of Section 26419.

26431. There shall be collected annually in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds maturing each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do so and perform each and every act that is necessary to collect that additional sum.

26432. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund, for purposes of this division, an amount that will equal the total of (a) the sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this division, as the principal and interest become due and payable, and (b) the sum that is necessary to carry out the provisions of Section 26433, appropriated without regard to fiscal years.

26433. For the purposes of carrying out this division, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized to be sold for the purposes of carrying out this division. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, plus the interest that the amounts would have earned in the Pooled Money Investment Account, from money received from the sale of bonds that would otherwise be deposited in that fund.

26434. All money derived from premium and accrued interest on bonds sold shall be reserved and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

26435. Any bonds issued or sold pursuant to this division may be refunded by the issuance of refunding bonds in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code. Approval by the electors of the state for the issuance of the



bonds shall include approval of the issuance of any bonds issued to refund any bonds originally issued or any previously issued refunding bonds.

26436. The people of California hereby find and declare that inasmuch as the proceeds from the sale of bonds authorized by this division are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitation imposed by that article.

#### CHAPTER 6. ACCOUNTABILITY

26437. In addition to any other required reports, the State Energy Resources Conservation and Development Commission, the State Air Resources Board, and the Controller shall each issue an annual report to the Governor, the Legislature, and the public that sets forth their activities and accomplishments relating to this act and future program directions. Each annual report shall include, but not be limited to, the following information: the number and dollar amounts of incentives, including but not limited to grants, loans, loan guarantees, credits, buydowns, and rebates; the recipients of incentives for the prior year; the administrative expenses relating to the act; a summary of research findings, including promising new research areas and technological innovations; and an assessment of the relationship between the award of incentives and any applicable strategic plan.

#### SECTION 5. Competing, regulatory alternative.

A. In the event that another measure ("competing measure") appears on the same ballot as this act that seeks to adopt or impose provisions or requirements that differ in any regard to, or supplement, the provisions or requirements contained in this act, the voters hereby expressly declare their intent that if both the competing measure and this act receive a majority of votes cast, and this act receives a greater number of votes than the competing measure, this act shall prevail in its entirety over the competing measure without regard to whether specific provisions of each measure directly conflict with each other.

B. In the event that both the competing measure and this act receive a majority of votes cast, and the competing measure receives a greater number of votes than this act, this act shall be deemed complementary to the competing measure. To this end, and to the maximum extent permitted by law, the provisions of this act shall be fully adopted except to the extent that specific provisions contained in each measure are deemed to be in direct conflict with each other on a "provision-by-provision" basis pursuant to *Yoshisato v. Superior Court* (1992) 2 Cal.4th 978.

SECTION 6. Amendment. The provisions of this act may be amended to carry out its purpose and intent by statutes approved by a two-thirds vote of each house of the Legislature and signed by the Governor.

SECTION 7. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

## PROPOSITION 11

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the California Constitution and adds sections to the Government Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

#### PROPOSED LAW

##### SECTION 1. Title.

This act shall be known and may be cited as the "Voters FIRST Act."

##### SEC. 2. Findings and Purpose.

The People of the State of California hereby make the following findings and declare their purpose in enacting this act is as follows:

(a) Under current law, California legislators draw their own political districts. Allowing politicians to draw their own districts is a serious conflict of interest that harms voters. That is why 99 percent of incumbent politicians were reelected in the districts they had drawn for themselves in the recent elections.

(b) Politicians draw districts that serve their interests, not those of our communities. For example, cities such as Long Beach, San Jose and Fresno are divided into multiple oddly shaped districts to protect incumbent legislators. Voters in many communities have no political voice because they have been

split into as many as four different districts to protect incumbent legislators. We need reform to keep our communities together so everyone has representation.

(c) This reform will make the redistricting process open so it cannot be controlled by the party in power. It will give us an equal number of Democrats and Republicans on the commission, and will ensure full participation of independent voters—whose voices are completely shut out of the current process. In addition, this reform requires support from Democrats, Republicans, and independents for approval of new redistricting plans.

(d) The independent Citizens Redistricting Commission will draw districts based on strict, nonpartisan rules designed to ensure fair representation. The reform takes redistricting out of the partisan battles of the Legislature and guarantees redistricting will be debated in the open with public meetings, and all minutes will be posted publicly on the Internet. Every aspect of this process will be open to scrutiny by the public and the press.

(e) In the current process, politicians are choosing their voters instead of voters having a real choice. This reform will put the voters back in charge.

#### SEC. 3. Amendment of Article XXI of the California Constitution.

SEC. 3.1. The heading of Article XXI of the California Constitution is amended to read:

#### ARTICLE XXI.

#### REAPPORTIONMENT REDISTRICTING OF SENATE, ASSEMBLY, CONGRESSIONAL AND BOARD OF EQUALIZATION DISTRICTS.

SEC. 3.2. Section 1 of Article XXI of the California Constitution is amended to read:

SECTION 1. In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary lines of the ~~Senatorial, Assembly, Congressional, and Board of Equalization congressional~~ districts in conformance with the following standards and process:

(a) Each member of the ~~Senate, Assembly, Congress, and the Board of Equalization~~ shall be elected from a single-member district.

(b) The population of all congressional districts of a particular type shall be reasonably equal. *After following this criterion, the Legislature shall adjust the boundary lines according to the criteria set forth and prioritized in paragraphs (2), (3), (4), and (5) of subdivision (d) of Section 2. The Legislature shall issue, with its final map, a report that explains the basis on which it made its decisions in achieving compliance with these criteria and shall include definitions of the terms and standards used in drawing its final map.*

~~(c) Every district shall be contiguous.~~

~~(d) (c) Districts of each type~~ Congressional districts shall be numbered consecutively commencing at the northern boundary of the State and ending at the southern boundary.

~~(e) The geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section.~~

*(d) The Legislature shall coordinate with the Citizens Redistricting Commission established pursuant to Section 2 to hold concurrent hearings, provide access to redistricting data and software, and otherwise ensure full public participation in the redistricting process. The Legislature shall comply with the open hearing requirements of paragraphs (1), (2), (3), and (7) of subdivision (a) of, and subdivision (b) of, Section 8253 of the Government Code, or its successor provisions of statute.*

SEC. 3.3. Section 2 is added to Article XXI of the California Constitution, to read:

Sec. 2. (a) *The Citizens Redistricting Commission shall draw new district lines (also known as "redistricting") for State Senate, Assembly, and Board of Equalization districts. This commission shall be created no later than December 31 in 2010, and in each year ending in the number zero thereafter.*

*(b) The Citizens Redistricting Commission (hereinafter the "commission") shall: (1) conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines; (2) draw district lines according to the redistricting criteria specified in this article; and (3) conduct themselves with integrity and fairness.*

*(c) (1) The selection process is designed to produce a Citizens Redistricting Commission that is independent from legislative influence and reasonably representative of this State's diversity.*

*(2) The Citizens Redistricting Commission shall consist of 14 members, as follows: five who are registered with the largest political party in California based on registration, five who are registered with the second largest political party in California based on registration, and four who are not registered with*

either of the two largest political parties in California based on registration.

(3) Each commission member shall be a voter who has been continuously registered in California with the same political party or unaffiliated with a political party and who has not changed political party affiliation for five or more years immediately preceding the date of his or her appointment. Each commission member shall have voted in two of the last three statewide general elections immediately preceding his or her application.

(4) The term of office of each member of the commission expires upon the appointment of the first member of the succeeding commission.

(5) Nine members of the commission shall constitute a quorum. Nine or more affirmative votes shall be required for any official action. The three final maps must be approved by at least nine affirmative votes which must include at least three votes of members registered from each of the two largest political parties in California based on registration and three votes from members who are not registered with either of these two political parties.

(6) Each commission member shall apply this article in a manner that is impartial and that reinforces public confidence in the integrity of the redistricting process. A commission member shall be ineligible for a period of 10 years beginning from the date of appointment to hold elective public office at the federal, state, county, or city level in this State. A member of the commission shall be ineligible for a period of five years beginning from the date of appointment to hold appointive federal, state, or local public office, to serve as paid staff for the Legislature or any individual legislator or to register as a federal, state, or local lobbyist in this State.

(d) The commission shall establish single-member districts for the Senate, Assembly, and State Board of Equalization pursuant to a mapping process using the following criteria as set forth in the following order of priority:

(1) Districts shall comply with the United States Constitution. Senate, Assembly, and State Board of Equalization districts shall have reasonably equal population with other districts for the same office, except where deviation is required to comply with the federal Voting Rights Act or allowable by law.

(2) Districts shall comply with the federal Voting Rights Act (42 U.S.C. Sec. 1971 and following).

(3) Districts shall be geographically contiguous.

(4) The geographic integrity of any city, county, city and county, neighborhood, or community of interest shall be respected to the extent possible without violating the requirements of any of the preceding subdivisions. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) To the extent practicable, and where this does not conflict with the criteria above, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant population.

(6) To the extent practicable, and where this does not conflict with the criteria above, each Senate district shall be comprised of two whole, complete, and adjacent Assembly districts, and each Board of Equalization district shall be comprised of 10 whole, complete, and adjacent Senate districts.

(e) The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.

(f) Districts for the Senate, Assembly, and State Board of Equalization shall be numbered consecutively commencing at the northern boundary of the State and ending at the southern boundary.

(g) By September 15 in 2011, and in each year ending in the number one thereafter, the commission shall approve three final maps that separately set forth the district boundary lines for the Senate, Assembly, and State Board of Equalization districts. Upon approval, the commission shall certify the three final maps to the Secretary of State.

(h) The commission shall issue, with each of the three final maps, a report that explains the basis on which the commission made its decisions in achieving compliance with the criteria listed in subdivision (d) and shall include definitions of the terms and standards used in drawing each final map.

(i) Each certified final map shall be subject to referendum in the same manner that a statute is subject to referendum pursuant to Section 9 of Article II. The date of certification of a final map to the Secretary of State shall be deemed the enactment date for purposes of Section 9 of Article II.

(j) If the commission does not approve a final map by at least the requisite votes or if voters disapprove a certified final map in a referendum, the Secretary of State shall immediately petition the Supreme Court for an order directing the appointment of special masters to adjust the boundary lines of

that map in accordance with the redistricting criteria and requirements set forth in subdivisions (d), (e), and (f). Upon its approval of the masters' map, the court shall certify the resulting map to the Secretary of State, which map shall constitute the certified final map for the subject type of district.

SEC. 3.4. Section 3 is added to Article XXI of the California Constitution, to read:

SEC. 3. (a) The commission has the sole legal standing to defend any action regarding a certified final map, and shall inform the Legislature if it determines that funds or other resources provided for the operation of the commission are not adequate. The Legislature shall provide adequate funding to defend any action regarding a certified map. The commission has sole authority to determine whether the Attorney General or other legal counsel retained by the commission shall assist in the defense of a certified final map.

(b) (1) The Supreme Court has original and exclusive jurisdiction in all proceedings in which a certified final map is challenged.

(2) Any registered voter in this state may file a petition for a writ of mandate or writ of prohibition, within 45 days after the commission has certified a final map to the Secretary of State, to bar the Secretary of State from implementing the plan on the grounds that the filed plan violates this Constitution, the United States Constitution, or any federal or state statute.

(3) The Supreme Court shall give priority to ruling on a petition for a writ of mandate or a writ of prohibition filed pursuant to paragraph (2). If the court determines that a final certified map violates this Constitution, the United States Constitution, or any federal or state statute, the court shall fashion the relief that it deems appropriate.

SEC. 4. Amendment of Government Code.

SEC. 4.1. Chapter 3.2 (commencing with Section 8251) is added to Division 1 of Title 2 of the Government Code, to read:

#### CHAPTER 3.2. CITIZENS REDISTRICTING COMMISSION

##### 8251. Citizens Redistricting Commission General Provisions.

(a) This chapter implements Article XXI of the California Constitution by establishing the process for the selection and governance of the Citizens Redistricting Commission.

(b) For purposes of this chapter, the following terms are defined:

(1) "Commission" means the Citizens Redistricting Commission.

(2) "Day" means a calendar day, except that if the final day of a period within which an act is to be performed is a Saturday, Sunday, or holiday, the period is extended to the next day that is not a Saturday, Sunday, or holiday.

(3) "Panel" means the Applicant Review Panel.

(4) "Qualified independent auditor" means an auditor who is currently licensed by the California Board of Accountancy and has been a practicing independent auditor for at least 10 years prior to appointment to the Applicant Review Panel.

(c) The Legislature may not amend this chapter unless all of the following are met:

(1) By the same vote required for the adoption of the final set of maps, the commission recommends amendments to this chapter to carry out its purpose and intent.

(2) The exact language of the amendments provided by the commission is enacted as a statute approved by a two-thirds vote of each house of the Legislature and signed by the Governor.

(3) The bill containing the amendments provided by the commission is in print for 10 days before final passage by the Legislature.

(4) The amendments further the purposes of this act.

(5) The amendments may not be passed by the Legislature in a year ending in 0 or 1.

##### 8252. Citizens Redistricting Commission Selection Process.

(a) (1) By January 1 in 2010, and in each year ending in the number zero thereafter, the State Auditor shall initiate an application process, open to all registered California voters in a manner that promotes a diverse and qualified applicant pool.

(2) The State Auditor shall remove from the applicant pool individuals with conflicts of interest including:

(A) Within the 10 years immediately preceding the date of application, neither the applicant, nor a member of his or her immediate family, may have done any of the following:

(i) Been appointed to, elected to, or have been a candidate for federal or state office.

(ii) Served as an officer, employee, or paid consultant of a political party or of the campaign committee of a candidate for elective federal or state office.

(iii) Served as an elected or appointed member of a political party central committee.

(iv) Been a registered federal, state, or local lobbyist.  
(v) Served as paid congressional, legislative, or Board of Equalization staff.

(vi) Contributed two thousand dollars (\$2,000) or more to any congressional, state, or local candidate for elective public office in any year, which shall be adjusted every 10 years by the cumulative change in the California Consumer Price Index, or its successor.

(B) Staff and consultants to, persons under a contract with, and any person with an immediate family relationship with the Governor, a Member of the Legislature, a member of Congress, or a member of the State Board of Equalization, are not eligible to serve as commission members. As used in this subdivision, a member of a person's "immediate family" is one with whom the person has a bona fide relationship established through blood or legal relation, including parents, children, siblings, and in-laws.

(b) The State Auditor shall establish an Applicant Review Panel, consisting of three qualified independent auditors, to screen applicants. The State Auditor shall randomly draw the names of three qualified independent auditors from a pool consisting of all auditors employed by the state and licensed by the California Board of Accountancy at the time of the drawing. The State Auditor shall draw until the names of three auditors have been drawn including one who is registered with the largest political party in California based on party registration, one who is registered with the second largest political party in California based on party registration, and one who is not registered with either of the two largest political parties in California. After the drawing, the State Auditor shall notify the three qualified independent auditors whose names have been drawn that they have been selected to serve on the panel. If any of the three qualified independent auditors decline to serve on the panel, the State Auditor shall resume the random drawing until three qualified independent auditors who meet the requirements of this subdivision have agreed to serve on the panel. A member of the panel shall be subject to the conflict of interest provisions set forth in paragraph (2) of subdivision (a).

(c) Having removed individuals with conflicts of interest from the applicant pool, the State Auditor shall no later than August 1 in 2010, and in each year ending in the number zero thereafter, publicize the names in the applicant pool and provide copies of their applications to the Applicant Review Panel.

(d) From the applicant pool, the Applicant Review Panel shall select 60 of the most qualified applicants, including 20 who are registered with the largest political party in California based on registration, 20 who are registered with the second largest political party in California based on registration, and 20 who are not registered with either of the two largest political parties in California based on registration. These subpools shall be created on the basis of relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography. The members of the panel shall not communicate with any State Board of Equalization member, Senator, Assembly Member, congressional member, or their representatives, about any matter related to the nomination process or applicants prior to the presentation by the panel of the pool of recommended applicants to the Secretary of the Senate and the Chief Clerk of the Assembly.

(e) By October 1 in 2010, and in each year ending in the number zero thereafter, the Applicant Review Panel shall present its pool of recommended applicants to the Secretary of the Senate and the Chief Clerk of the Assembly. No later than November 15 in 2010, and in each year ending in the number zero thereafter, the President pro Tempore of the Senate, the Minority Floor Leader of the Senate, the Speaker of the Assembly, and the Minority Floor Leader of the Assembly may each strike up to two applicants from each subpool of 20 for a total of eight possible strikes per subpool. After all legislative leaders have exercised their strikes, the Secretary of the Senate and the Chief Clerk of the Assembly shall jointly present the pool of remaining names to the State Auditor.

(f) No later than November 20 in 2010, and in each year ending in the number zero thereafter, the State Auditor shall randomly draw eight names from the remaining pool of applicants as follows: three from the remaining subpool of applicants registered with the largest political party in California based on registration, three from the remaining subpool of applicants registered with the second largest political party in California based on registration, and two from the remaining subpool of applicants who are not registered with either of the two largest political parties in California based on registration. These eight individuals shall serve on the Citizens Redistricting Commission.

(g) No later than December 31 in 2010, and in each year ending in the number zero thereafter, the eight commissioners shall review the remaining names in the pool of applicants and appoint six applicants to the commission

as follows: two from the remaining subpool of applicants registered with the largest political party in California based on registration, two from the remaining subpool of applicants registered with the second largest political party in California based on registration, and two from the remaining subpool of applicants who are not registered with either of the two largest political parties in California based on registration. The six appointees must be approved by at least five affirmative votes which must include at least two votes of commissioners registered from each of the two largest parties and one vote from a commissioner who is not affiliated with either of the two largest political parties in California. The six appointees shall be chosen to ensure the commission reflects this state's diversity, including, but not limited to, racial, ethnic, geographic, and gender diversity. However, it is not intended that formulas or specific ratios be applied for this purpose. Applicants shall also be chosen based on relevant analytical skills and ability to be impartial.

8252.5. Citizens Redistricting Commission Vacancy, Removal, Resignation, Absence.

(a) In the event of substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office, a member of the commission may be removed by the Governor with the concurrence of two-thirds of the Members of the Senate after having been served written notice and provided with an opportunity for a response. A finding of substantial neglect of duty or gross misconduct in office may result in referral to the Attorney General for criminal prosecution or the appropriate administrative agency for investigation.

(b) Any vacancy, whether created by removal, resignation, or absence, in the 14 commission positions shall be filled within the 30 days after the vacancy occurs, from the pool of applicants of the same voter registration category as the vacating nominee that was remaining as of November 20 in the year in which that pool was established. If none of those remaining applicants are available for service, the State Auditor shall fill the vacancy from a new pool created for the same voter registration category in accordance with Section 8252.

8253. Citizens Redistricting Commission Miscellaneous Provisions.

(a) The activities of the Citizens Redistricting Commission are subject to all of the following:

(1) The commission shall comply with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2), or its successor. The commission shall provide not less than 14 days' public notice for each meeting, except that meetings held in September in the year ending in the number one may be held with three days' notice.

(2) The records of the commission pertaining to redistricting and all data considered by the commission are public records that will be posted in a manner that ensures immediate and widespread public access.

(3) Commission members and staff may not communicate with or receive communications about redistricting matters from anyone outside of a public hearing. This paragraph does not prohibit communication between commission members, staff, legal counsel, and consultants retained by the commission that is otherwise permitted by the Bagley-Keene Open Meeting Act or its successor outside of a public hearing.

(4) The commission shall select by the voting process prescribed in paragraph (5) of subdivision (c) of Section 2 of Article XXI of the California Constitution one of their members to serve as the chair and one to serve as vice chair. The chair and vice chair shall not be of the same party.

(5) The commission shall hire commission staff, legal counsel, and consultants as needed. The commission shall establish clear criteria for the hiring and removal of these individuals, communication protocols, and a code of conduct. The commission shall apply the conflicts of interest listed in paragraph (2) of subdivision (a) of Section 8252 to the hiring of staff to the extent applicable. The Secretary of State shall provide support functions to the commission until its staff and office are fully functional. Any individual employed by the commission shall be exempt from the civil service requirements of Article VII of the California Constitution. The commission shall require that at least one of the legal counsel hired by the commission has demonstrated extensive experience and expertise in implementation and enforcement of the federal Voting Rights Act of 1965 (42 U.S.C. Sec. 1971 and following). The commission shall make hiring, removal, or contracting decisions on staff, legal counsel, and consultants by nine or more affirmative votes including at least three votes of members registered from each of the two largest parties and three votes from members who are not registered with either of the two largest political parties in California.

(6) Notwithstanding any other provision of law, no employer shall discharge, threaten to discharge, intimidate, coerce, or retaliate against any employee by reason of such employee's attendance or scheduled attendance at any meeting

of the commission.

(7) The commission shall establish and implement an open hearing process for public input and deliberation that shall be subject to public notice and promoted through a thorough outreach program to solicit broad public participation in the redistricting public review process. The hearing process shall include hearings to receive public input before the commission draws any maps and hearings following the drawing and display of any commission maps. In addition, hearings shall be supplemented with other activities as appropriate to further increase opportunities for the public to observe and participate in the review process. The commission shall display the maps for public comment in a manner designed to achieve the widest public access reasonably possible. Public comment shall be taken for at least 14 days from the date of public display of any map.

(b) The Legislature shall take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide the public ready access to redistricting data and computer software for drawing maps. Upon the commission's formation and until its dissolution, the Legislature shall coordinate these efforts with the commission.

#### 8253.5. Citizens Redistricting Commission Compensation.

Members of the commission shall be compensated at the rate of three hundred dollars (\$300) for each day the member is engaged in commission business. For each succeeding commission, the rate of compensation shall be adjusted in each year ending in nine by the cumulative change in the California Consumer Price Index, or its successor. Members of the panel and the commission are eligible for reimbursement of personal expenses incurred in connection with the duties performed pursuant to this act. A member's residence is deemed to be the member's post of duty for purposes of reimbursement of expenses.

#### 8253.6. Citizens Redistricting Commission Budget, Fiscal Oversight.

(a) In 2009, and in each year ending in nine thereafter, the Governor shall include in the Governor's Budget submitted to the Legislature pursuant to Section 12 of Article IV of the California Constitution amounts of funding for the State Auditor, the Citizens Redistricting Commission, and the Secretary of State that are sufficient to meet the estimated expenses of each of those officers or entities in implementing the redistricting process required by this act for a three-year period, including, but not limited to, adequate funding for a statewide outreach program to solicit broad public participation in the redistricting process. The Governor shall also make adequate office space available for the operation of the commission. The Legislature shall make the necessary appropriation in the Budget Act, and the appropriation shall be available during the entire three-year period. The appropriation made shall be equal to the greater of three million dollars (\$3,000,000), or the amount expended pursuant to this subdivision in the immediately preceding redistricting process, as each amount is adjusted by the cumulative change in the California Consumer Price Index, or its successor, since the date of the immediately preceding appropriation made pursuant to this subdivision. The Legislature may make additional appropriations in any year in which it determines that the commission requires additional funding in order to fulfill its duties.

(b) The commission, with fiscal oversight from the Department of Finance or its successor, shall have procurement and contracting authority and may hire staff and consultants, exempt from the civil service requirements of Article VII of the California Constitution, for the purposes of this act, including legal representation.

#### SEC. 5. Conflicting Ballot Propositions.

(a) In the event that this measure and another measure(s) relating to the redistricting of Senate, Assembly, congressional, or Board of Equalization districts are approved by a majority of voters at the same election, and this measure receives a greater number of affirmative votes than any other such measure(s), this measure shall control in its entirety and the other measure(s) shall be rendered void and without any legal effect. If this measure is approved by a majority of the voters but does not receive a greater number of affirmative votes than the other measure(s), this measure shall take effect to the extent permitted by law.

(b) If any provisions of this measure are superseded by the provisions of any other conflicting measure approved by the voters and receiving a greater number of affirmative votes at the same election, and the conflicting measure is subsequently held to be invalid, the provisions of this measure shall be self-executing and given full force of law.

#### SEC. 6. Severability.

The provisions of this act are severable. If any provision of this act or its

application is held to be invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

## PROPOSITION 12

This law proposed by Senate Bill 1572 of the 2007–2008 Regular Session (Chapter 122, Statutes of 2008) is submitted to the people in accordance with the provisions of Article XVI of the California Constitution.

This proposed law adds sections to the Military and Veterans Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

SECTION 1. Article 5x (commencing with Section 998.400) is added to Chapter 6 of Division 4 of the Military and Veterans Code, to read:

#### Article 5x. Veterans' Bond Act of 2008

998.400. This article may be cited as the Veterans' Bond Act of 2008.

998.401. (a) The State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), except as otherwise provided herein, is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued by this article, and the provisions of that law are included in this article as though set out in full in this article. All references in this article to "herein" refer both to this article and that law.

(b) For purposes of the State General Obligation Bond Law, the Department of Veterans Affairs is designated the board.

998.402. As used herein, the following words have the following meanings:

(a) "Board" means the Department of Veterans Affairs.

(b) "Bond" means veterans' bond, a state general obligation bond, issued pursuant to this article adopting the provisions of the State General Obligation Bond Law.

(c) "Bond act" means this article authorizing the issuance of state general obligation bonds and adopting the State General Obligation Bond Law by reference.

(d) "Committee" means the Veterans' Finance Committee of 1943, established by Section 991.

(e) "Fund" means the Veterans' Farm and Home Building Fund of 1943, established by Section 988.

998.403. For the purpose of creating a fund to provide farm and home aid for veterans in accordance with the Veterans' Farm and Home Purchase Act of 1974 (Article 3.1 (commencing with Section 987.50)), and of all acts amendatory thereof and supplemental thereto, the committee may create a debt or debts, liability or liabilities, of the State of California, in the aggregate amount of not more than nine hundred million dollars (\$900,000,000), exclusive of refunding bonds, in the manner provided herein.

998.404. (a) All bonds authorized by this article, when duly sold and delivered as provided herein, constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal and interest thereof.

(b) There shall be collected annually, in the same manner and at the same time as other state revenue is collected, a sum of money, in addition to the ordinary revenues of the state, sufficient to pay the principal of, and interest on, these bonds as provided herein, and all officers required by law to perform any duty in regard to the collection of state revenues shall collect this additional sum.

(c) On the dates on which funds are to be remitted pursuant to Section 16676 of the Government Code for the payment of debt service on the bonds in each fiscal year, there shall be transferred to the General Fund to pay the debt service all of the money in the fund, not in excess of the amount of debt service then due and payable. If the money transferred on the remittance dates is less than debt service then due and payable, the balance remaining unpaid shall be transferred to the General Fund out of the fund as soon as it shall become available, together with interest thereon from the remittance date until paid, at the same rate of interest as borne by the bonds, compounded semiannually. Notwithstanding any other provision of law to the contrary, this subdivision shall apply to all veterans farm and home purchase bond acts pursuant to this

chapter. This subdivision does not grant any lien on the fund or the moneys therein to the holders of any bonds issued under this article. For the purposes of this subdivision, "debt service" means the principal (whether due at maturity, by redemption, or acceleration), premium, if any, or interest payable on any date with respect to any series of bonds. This subdivision shall not apply, however, in the case of any debt service that is payable from the proceeds of any refunding bonds.

998.405. There is hereby appropriated from the General Fund, for purposes of this article, a sum of money that will equal both of the following:

(a) That sum annually necessary to pay the principal of, and the interest on, the bonds issued and sold as provided herein, as that principal and interest become due and payable.

(b) That sum necessary to carry out Section 998.406, appropriated without regard to fiscal years.

998.406. For the purposes of this article, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of a sum of money not to exceed the amount of the unsold bonds which have been authorized by the committee to be sold pursuant to this article. Any sums withdrawn shall be deposited in the fund. All moneys made available under this section to the board shall be returned by the board to the General Fund, plus the interest that the amounts would have earned in the Pooled Money Investment Account, from the sale of bonds for the purpose of carrying out this article.

998.407. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for the purposes of carrying out this article. The amount of the request shall not exceed the amount of unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of carrying out this article. The board shall execute whatever documents are required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this article.

998.408. Upon request of the board, supported by a statement of its plans and projects approved by the Governor, the committee shall determine whether to issue any bonds authorized under this article in order to carry out the board's plans and projects, and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out these plans and projects progressively, and it is not necessary that all of the bonds be issued or sold at any one time.

998.409. As long as any bonds authorized under this article are outstanding, the Secretary of Veterans Affairs shall, at the close of each fiscal year, require a survey of the financial condition of the Division of Farm and Home Purchases, together with a projection of the division's operations, to be made by an independent public accountant of recognized standing. The results

of each survey and projection shall be reported in writing by the public accountant to the Secretary of Veterans Affairs, the California Veterans Board, the appropriate policy committees dealing with veterans affairs in the Senate and the Assembly, and the committee.

The Division of Farm and Home Purchases shall reimburse the public accountant for these services out of any money which the division may have available on deposit with the Treasurer.

998.410. The committee may authorize the Treasurer to sell all or any part of the bonds authorized by this article at the time or times established by the Treasurer.

Whenever the committee deems it necessary for an effective sale of the bonds, the committee may authorize the Treasurer to sell any issue of bonds at less than their par value, notwithstanding Section 16754 of the Government Code. However, the discount on the bonds shall not exceed 3 percent of the par value thereof.

998.411. Out of the first money realized from the sale of bonds as provided herein, there shall be redeposited in the General Obligation Bond Expense Revolving Fund, established by Section 16724.5 of the Government Code, the amount of all expenditures made for the purposes specified in that section, and this money may be used for the same purpose and repaid in the same manner whenever additional bond sales are made.

998.412. Any bonds issued and sold pursuant to this article may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code. The approval of the voters for the issuance of bonds under this article includes approval for the issuance of bonds issued to refund bonds originally issued or any previously issued refunding bonds.

998.413. Notwithstanding any provision of the bond act, if the Treasurer sells bonds under this article for which bond counsel has issued an opinion to the effect that the interest on the bonds is excludable from gross income for purposes of federal income tax, subject to any conditions which may be designated, the Treasurer may establish separate accounts for the investment of bond proceeds and for the earnings on those proceeds, and may use those proceeds or earnings to pay any rebate, penalty, or other payment required by federal law or take any other action with respect to the investment and use of bond proceeds required or permitted under federal law necessary to maintain the tax-exempt status of the bonds or to obtain any other advantage under federal law on behalf of the funds of this state.

998.414. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this article are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by Article XIII B.



**Proposition 7  
Renewable Energy. Statute.**

**BACKGROUND**

**California Electricity Providers**

Californians generally receive electricity service from one of three types of providers:

- Investor-owned utilities (IOUs), which provide 68 percent of retail electricity service.
- Local, publicly owned utilities, which provide 24 percent of retail electricity service.
- Electric service providers (ESPs), which provide 8 percent of retail electricity service.

(See the nearby text box for definitions of commonly used terms throughout this analysis.)

**Commonly Used Terms—Proposition 7**

**Energy Commission (Energy Resources Conservation and Development Commission).** The state agency that forecasts energy supply and demand, implements energy conservation programs, conducts energy-related research, and permits certain power plants.

**ESP (Electric Service Provider).** A company that provides electricity service directly to customers who have chosen not to receive service from the utility that serves their geographic area.

**IOU (Investor-Owned Utility).** A privately owned electric utility that has a defined geographic service area and is required by state law to serve customers in that area. The Public Utilities Commission regulates the IOU's rates and terms of service.

**Market Price of Electricity.** A benchmark price of electricity that is determined by a state agency according to a definition and criteria specified in state law.

**Publicly Owned Utility.** A local government agency, governed by a board—either elected by the public or appointed by a local elected body—that provides electricity service in its local area.

**PUC (Public Utilities Commission).** The state agency that regulates various types of utilities, including IOUs and ESPs.

**RPS (Renewables Portfolio Standard).** Requirement that electricity providers increase their share of electricity from renewable resources (such as wind or solar power) according to a specified time line.

**Investor-Owned Utilities.** The IOUs are owned by private investors and provide electricity service for profit. The state's three largest electricity IOUs are Pacific Gas and Electric, Southern California Edison, and San Diego Gas and Electric. Each IOU has a unique, defined geographic service area. State law requires each IOU to provide electricity service to customers within its service area. The rates that IOUs can charge their customers are determined by the California Public Utilities Commission (PUC). In addition, PUC regulates how IOUs provide electricity service to their customers. These conditions on electricity rates and service are known as "terms of service."

**Publicly Owned Utilities.** A publicly owned electric utility is a local government agency, governed by a board—either elected by the public or appointed by a local elected body—that provides electricity service in its local area. Publicly owned electric utilities are not regulated by PUC. Rather, they set their own terms of service. California's major publicly owned electric utilities include the Los Angeles Department of Water and Power and the Sacramento Municipal Utility District.

**Electric Service Providers.** The ESPs provide electricity service to customers who have chosen not to receive service from the utility that serves their geographic area. Instead, these customers have entered into "direct access" contracts with ESPs. Under a



direct access contract, an ESP delivers electricity to the customer through the local utility's electricity transmission wires.

There are currently around 20 registered ESPs in the state. These ESPs generally serve large industrial and commercial customers. The ESPs also provide electricity to some state and local government agencies, such as several University of California campuses and some local school districts.

The state's regulatory authority over ESPs is limited. Although the PUC does not set an ESP's terms of service, including the rates it charges its customers, it does require ESPs to meet a limited set of requirements, including proof that they have enough electricity supply to meet demand.

## **Electricity Infrastructure**

*Major Components.* Four principal components comprise California's system for generating and delivering electricity:

- Electricity generating facilities.
- The interstate electricity transmission grid.
- Electricity transmission lines that tie generation facilities to the grid.
- Electricity distribution lines that connect the electricity grid to electricity consumers.

Regulatory responsibility for permitting this infrastructure is held by one or more federal, state, and local agencies, depending on the particular project.

*Permitting Authority.* Permitting authority for an electricity generating facility is determined by the type and size of the facility to be operated. For example, hydroelectric generating facilities, such as dams, are permitted by the Federal Energy Regulatory Commission (FERC). Thermal electricity generating facilities—primarily natural gas-fired power plants—capable of generating 50 megawatts or more of electricity are issued permits by the state's Energy Resources Conservation and Development Commission (Energy Commission). Most other electricity generating facilities—including many types of renewable energy generating facilities, such as wind turbines and nonthermal solar power plants—are permitted by local government.

Permitting authority over electricity transmission lines depends upon the function of the line to be built, as well as the type of electricity provider that will own the line. Depending upon its function and ownership, a line may be permitted by FERC, the Energy Commission, PUC, or local government.

*Energy Commission's Permit Processing Time Frames.* Existing law defines the time frames within which the Energy Commission must approve or deny an application to construct and operate an electricity generating facility or transmission line under its

jurisdiction. Those time frames are 18 months for most applications, or 12 months for applications meeting certain conditions.

## **Energy From Renewable Resources**

***Renewables Portfolio Standard.*** Current law requires IOUs and ESPs to increase the amount of electricity they acquire (from their own sources or purchased from others) that is generated from renewable resources, such as solar and wind power. This requirement is known as the renewables portfolio standard (RPS). Each electricity provider subject to the RPS must increase its share of electricity generated from eligible renewable resources by at least 1 percent each year so that, by the end of 2010, 20 percent of its electricity comes from renewable sources. (As discussed later, publicly owned utilities are subject to a different renewable energy requirement.)

***IOU Obligations Under the RPS Limited by a Cost Cap.*** Current law limits the amount of renewable electricity an IOU is required to acquire under the RPS, regardless of the annual RPS targets that apply to the IOU. The limit is based on two cost-related factors:

- The "market price of electricity," as that price is defined by PUC according to criteria specified in state law.
- The amount of money that would have been collected from electricity ratepayers under a previously operating state program to subsidize the cost of renewable electricity.

An IOU is required to acquire renewable electricity even at a cost that exceeds the PUC-defined market price of electricity. An IOU that does not acquire sufficient amounts of renewable electricity may face monetary penalties. However, an IOU is required to acquire such higher-cost renewable electricity only to the extent that the above-market costs are less than the amount of funds that the IOU would have collected under the previously operating state subsidy program. In this way, current law caps the annual cost of complying with the RPS, both to IOUs and to their customers who ultimately pay these costs through rates charged to them.

***Enforcing the RPS.*** Current law requires PUC to enforce IOU and ESP compliance with the RPS. Only the IOUs are required to submit plans that describe how they will meet RPS targets at the least possible cost. In addition, IOUs and ESPs generally must offer contracts to purchase renewable resources of no less than ten years.

The PUC may fine an IOU or an ESP that fails to meet its year-to-year RPS target. The PUC has set the amount of the penalties at 5 cents per kilowatt hour by which the IOU or ESP falls short of its RPS target. The PUC has capped the total amount of penalties an IOU or ESP can be charged in a year at \$25 million. Current law does not direct the use of these penalty monies, which generally are deposited in the state General Fund.

***Publicly Owned Utilities Set Their Own Renewable Energy Standards.*** Current law does not require publicly owned utilities to meet the same RPS that other electricity providers are required to meet. Rather, current law directs each publicly owned utility to put in place and enforce its own renewables portfolio standard and allows each publicly owned utility to define the electricity sources that it counts as renewable. No state agency enforces publicly owned utility compliance or places penalties on a publicly owned utility that fails to meet the renewable energy goals it has set for itself.

***Progress Towards Meeting the State's RPS Goal.*** The different types of electricity providers vary in their progress towards achieving the state's RPS goal of having 20 percent of electricity generated from renewable sources by 2010. As of 2006 (the last year for which data are available), the IOUs together had 13 percent of their electricity generated from renewable resources. The ESPs had 2 percent of their electricity generated from those same types of resources. Using their own, various definitions of "renewable resources," the publicly owned utilities together had nearly 12 percent of their electricity generated from renewable resources. If the current definition of renewable resources in state law that applies to IOUs and ESPs (which does not include large hydroelectric dams, for example) is applied to the publicly owned utilities, their renewable resources count falls to just over 7 percent as of 2006. However, in recent years, publicly owned utilities have increased their renewable electricity deliveries at a faster rate than have the IOUs, according to data compiled by the Energy Commission.

## **PROPOSAL**

### **Overview of Measure**

This measure makes a number of changes regarding RPS and the permitting of electricity generating facilities and transmission lines. Primarily, the measure:

- Establishes additional, higher RPS targets for electricity providers.
- Makes RPS requirements enforceable on publicly owned utilities.
- Changes the process for defining "market price of electricity."
- Changes the cost cap provisions that limit electricity provider obligations under the RPS.
- Expands scope of RPS enforcement.
- Revises RPS-related contracting period and obligations.
- Sets a lower penalty rate in statute and removes the cap on the total penalty amount for failure to meet RPS requirements.
- Directs the use of RPS penalty revenues.
- Expands Energy Commission's permitting authority.

Each of these components is described below.

## **Individual Components of Measure**

***Establishes Additional, Higher RPS Targets.*** The measure adds two new, higher RPS targets—40 percent by 2020 and 50 percent by 2025. Each electricity provider would need to meet the targets by increasing the share of electricity that it acquires that is generated from renewable energy by at least 2 percent a year, rather than the current 1 percent per year. The measure eliminates the requirement under current law that an electricity provider compensate for failure to meet an RPS target in any given year by procuring additional renewable energy in subsequent years.

***Makes RPS Requirements Enforceable on Publicly Owned Utilities.*** The measure requires publicly owned utilities generally to comply with the same RPS as required of IOUs and ESPs, including the current RPS goal to increase to 20 percent by 2010 the proportion of each electricity provider's electricity that comes from renewable resources. The measure also gives the Energy Commission authority to enforce RPS requirements on publicly owned utilities. The measure, however, specifies that the Energy Commission does not have the authority to approve or disapprove a publicly owned utility's renewable resources energy contract, including its terms or conditions.

***Changes Process for Defining "Market Price of Electricity."*** The measure makes two major changes in how the market price of electricity is defined for purposes of implementing the RPS. First, the measure shifts from PUC to the Energy Commission responsibility for determining the market price of electricity. Second, the measure adds three new criteria to current-law requirements that the Energy Commission would need to consider when defining the market price of electricity. These criteria include consideration of the value and benefits of renewable resources.

***Changes the Cost Cap Provisions That Limit Electricity Provider Obligations Under the RPS.*** As under current law, the measure provides a cost cap to limit the amount of potentially higher-cost renewable electricity that an IOU must acquire regardless of the annual RPS targets. The measure extends the cost cap limit to ESPs as well. The measure requires that an electricity provider acquire renewable electricity towards meeting annual RPS targets, or face monetary penalties, only as long as the cost of such electricity is no more than 10 percent above the Energy Commission-defined market price for electricity. The potentially higher cost of electricity generated from renewable resources would be recovered by IOUs and ESPs through rates charged to their customers, but subject to this 10 percent cost cap. Publicly owned utilities also could recover these potentially higher costs through rates charged to their customers. However, the costs of publicly owned utilities would not be subject to a cost cap similar to that which applies to IOUs and ESPs.

***Expands Scope of RPS Enforcement.*** The measure expands PUC's current RPS-related enforcement mechanisms over IOUs to encompass ESPs. The enforcement mechanisms include review and adoption of renewable resources procurement plans,

related rate-setting authority, and penalty authority. The measure grants to the Energy Commission similar RPS-related enforcement authority over publicly owned utilities.

***Revises RPS-Related Contracting Period and Obligations.*** The measure requires all electricity providers—including publicly owned utilities—to offer renewable energy procurement contracts of no less than 20 years, with certain exceptions. The measure further requires an electricity provider to accept all offers for renewable energy that are at or below the market price of electricity as defined by the Energy Commission.

***Sets Lower Penalty Rate in Statute and Removes Cap on Total Penalty Amount.*** The measure includes a formula to determine monetary penalties for an electricity provider that fails to sign contracts for sufficient amounts of renewable energy. The penalty formula is 1 cent per kilowatt hour by which the provider falls short of the applicable RPS target. The measure's formula therefore reflects a penalty *rate* that is lower than the 5 cents per kilowatt hour penalty rate currently established by the PUC. However, the measure also specifies that neither PUC nor the Energy Commission shall cap the *total* amount of penalties that may be placed on an electricity provider in any given year.

In addition, the measure states that no electricity provider shall recover the cost of any penalties through rates paid by its customers. However, it is unclear how this prohibition will apply to publicly owned utilities. This is because publicly owned utilities typically have no other source of revenues which could be used to pay a penalty other than rates paid by their customers.

Finally, the measure also specifies the conditions under which PUC or the Energy Commission, as applicable, may waive the statutorily prescribed penalty, such as when the electricity provider demonstrates a "good faith effort" to meet the RPS.

***Directs Use of Penalty Monies.*** The measure directs that any RPS-related penalties (along with other specified revenues) be used to facilitate, through property or right-of-way acquisition and construction of transmission facilities, development of transmission infrastructure necessary to achieve RPS. The measure specifies that the Energy Commission will hold title to any properties acquired with such funds.

***Expands Energy Commission's Permitting Authority.*** The measure expands the Energy Commission's existing permitting authority in two major ways, not limited to the RPS. Specifically, the measure:

- Grants the Energy Commission the authority to permit new nonthermal renewable energy power plants capable of producing 30 megawatts of electricity or more. The new permitting authority would include related infrastructure, such as electricity transmission lines that unite the plant with the transmission network grid. Currently, this permitting authority rests with local governments.

- Gives the Energy Commission the authority to permit IOUs to construct new transmission lines within the electricity transmission grid, currently a responsibility solely of the PUC at the state level. It is unclear, however, whether the measure has removed PUC's authority in giving it to the Energy Commission.

The measure specifies that the Energy Commission is to issue a permit for a qualifying renewable energy plant or related facility within six months of the filing of an application. However, the commission is not required to issue the permit within the six-month time frame if there is evidence that the facility would cause significant harm to the environment or the electrical system or in some way does not comply with legal or other specified standards.

***Declares Limited Impact on Ratepayer Electricity Bills.*** In its findings and declarations, the measure states that, in the "short term," California's investment in solar and clean energy (which would include the implementation of the measure) will result in no more than a 3 percent increase in electricity rates for consumers. However, the measure includes no specific provisions to implement or enforce this declaration.

## **FISCAL EFFECTS**

### **State and Local Administrative Impacts**

***Increased Energy Commission Costs.*** The measure will increase the annual administrative costs of the Energy Commission by approximately \$2.4 million due to new responsibilities and expansion of existing duties. Under current law, the additional costs would be funded by fees paid by electricity customers.

The measure gives the Energy Commission new responsibilities which currently are carried out by PUC—namely, defining the market price of electricity and permitting IOU-related transmission lines. However, significant offsetting reductions in PUC's costs may not result under this measure. This is because the measure does not amend the State Constitution to delete from PUC's portfolio of responsibilities those which are given to the Energy Commission. To the extent PUC continues to carry out its existing duties, there likely will not be offsetting savings to PUC.

***Increased PUC Costs.*** In addition, the measure's other requirements will increase annual administrative costs of the PUC by up to \$1 million. These additional costs will result from greater workload related to the increased RPS targets. Under current law, these additional costs would be funded by fees paid by electricity customers.

***Uncertain Effect on Local Government Administrative Costs.*** The measure shifts from local government to the Energy Commission responsibility for permitting certain renewable energy facilities. As a consequence, the measure will result in administrative cost savings of an unknown amount to local governments. However, local governments may face new costs associated with representing their interests at Energy Commission

proceedings to permit renewable energy facilities. It is uncertain whether, on balance, savings to local governments will outweigh costs resulting from this measure. In any event, the overall net impact on local government administrative costs statewide is likely to be minor.

## **State and Local Government Costs and Revenues**

The primary fiscal effect of this measure on state and local governments would result from any effect it would have on electricity rates. As discussed below, changes in electricity rates would affect both government costs and revenues.

### **Unknown Effect on State and Local Government Costs**

*Overview.* Changes in electricity rates would affect government *costs* since state and local governments are large consumers of electricity. It is unknown, however, how the measure will affect electricity rates, both in the short term and in the longer term. This is because it is difficult to predict the relative prices of renewable resources and those of conventional electricity sources, such as natural gas. The measure could result in higher or lower electricity rates from what they would otherwise be.

*Short Term.* We conclude that the prospects for higher electricity rates are more likely in the short term, based on a comparison of current cost factors for key renewable resources with those for conventional resources. These cost factors include the cost of facility construction and technology, as well as day-to-day operational costs, which include the cost of inputs into the electricity generation process such as fuel. Over the short term at least, these cost factors are more likely to keep the cost of electricity generated from renewable resources, and hence the rates paid by electricity customers for that electricity, above the cost of electricity generated from conventional resources. However, the potential for higher electricity rates to the customer, including state and local governments, might be limited by the measure. This is because the measure caps the cost that privately owned electricity providers must pay for electricity from renewable resources. The cap will be set in relation to the market price of electricity, which will be determined by the Energy Commission. However, because the measure allows the commission substantial discretion in determining the market price of electricity, it is uncertain how the commission will set this cap. In turn, the effect of the cap on the price of electricity paid by customers is unknown.

*Long Term.* In the long run, there are factors that may be affected by the measure that have the potential either to increase or to decrease electricity rates from what they otherwise would be. For example, to the extent that the measure advances development of renewable energy resources in a manner that lowers their costs, electricity customers might experience longer-term savings. On the other hand, the same cost factors that could lead to short-term electricity rates that are higher might also lead to higher long-run electricity rates. To the extent that the measure requires electricity providers to acquire more costly electricity than they otherwise would, they will experience longer-term cost increases. It is unknown whether, on balance, factors that could increase

electricity rates over the long term will outweigh those that could decrease electricity rates over the long term. Therefore, the long-term effect of the measure on government costs is unknown.

### **Unknown Effect on State and Local Government Revenues**

*Overview.* State and local *revenues* also would be affected by the measure's impact on electricity rates. This is for two reasons. First, some local governments charge a tax on the cost of electricity use within their boundaries. To the extent that the measure results in an increase or a decrease in electricity rates compared to what they would be otherwise, there would be a corresponding increase or decrease in these local tax revenues. Second, tax revenues received by governments are affected by business profits, personal income, and taxable sales—all of which in turn are affected by what individuals and businesses pay for electricity. Higher electricity costs will lower government revenues, while lower electricity costs will raise these revenues.

*Short Term.* On balance, as explained above, we believe that the prospects for electricity rates that are higher than they would otherwise be are more likely in the short term. However, as also is the case with state and local government costs, the measure's potential to lower state and local government revenues due to higher electricity rates might be limited by the measure's cost cap provision. Thus, for the short term, to the extent that the measure results in higher electricity rates from what they would otherwise be, local utility user tax revenues would increase and state and local sales and income tax revenues would decrease. The overall short-term net effect of the measure on state and local revenues is unknown.

*Long Term.* As for the long run, as explained above, the measure has the potential to either increase or decrease electricity rates. Because the measure's effect on long-term electricity rates is unknown, the measure's effect on long-term government revenues is also unknown.





★ ARGUMENT IN FAVOR OF PROPOSITION 7 ★

*Vote Yes on Proposition 7.*

- We can do better than dirty coal, nuclear power, and offshore drilling.

Proposition 7, The Solar and Clean Energy Act, requires all utilities to provide more solar, wind, geothermal, biomass, tidal, and small hydroelectric energy. Renewable energy standards are increased 2% per year, over seventeen years, so that half of our electricity will come from cleaner and cheaper sources by 2025.

Proposition 7 is a balanced solution that will reduce the rising costs of energy, and limit the dangers of global warming, including increased wildfires, water shortages, threats to endangered species, and illnesses from heat induced pollution.

Proposition 7 was carefully written and reviewed by legal, energy, and environmental experts.

Proposition 7 requires the California Energy Commission to designate solar and clean energy production zones, primarily in our vast deserts.

*Vote Yes on Proposition 7 to:*

- Make California the world leader in clean power technology.
- Help create over 370,000 new high wage jobs.

Proposition 7 meets all environmental protections, including:

- The California Environmental Quality Act.
- The Desert Protection Act.
- Local Government Reviews.

Vote Yes on Proposition 7 to help grow a strong market for large, and small, solar and renewable energy businesses. California firms have developed this proven technology that will meet our present and future electricity needs.

The independent, nonpartisan California Legislative Analyst found that administration of Proposition 7's renewable energy standards would only cost three and a half million dollars. Also, if the utilities fail to meet renewable energy standards, utilities are prohibited from passing on penalty costs to consumers.

Proposition 7's shift to solar and clean energy is guaranteed to never add more than 3% per year to our electricity bills.

*So, why are the utilities spending tens of millions of dollars on "greenwashing" propaganda; sponsoring political parties; and partnering with select environmental groups to mislead us?*

Because California's electric utilities have a dirty little secret: *Most of California's electricity comes from burning coal and fossil fuels.* Experts agree that 40% of global warming pollution comes from this type of electricity generation.

Electricity from dirty power plants, owned, operated, or transmitted by California utilities, releases 107 million metric tons of greenhouse gas pollution each year. That makes California the world's 16th largest global warming polluter. (Half of Los Angeles' electricity is generated with out-of-state coal.)

Remember, the utilities botched the 2001 energy crisis; then paid their top executives million dollar bonuses.

*Vote Yes on Proposition 7.*

- Energy from the sun, wind, tides, and heat from the earth will always be clean, free, safe, and unlimited.
- Expensive fossil fuels, oil and gas drilling, and dangerous nuclear power, will cost Californians more.

We need to do something major and environmentally smart, to stop global warming pollution.

Let's stop relying on foreign oil, and imported energy, so that future generations can live in peace.

California is especially blessed with renewable energy resources.

We can lead the world in clean energy!

*Vote Yes on Proposition 7.* [www.solarandcleanenergy.org](http://www.solarandcleanenergy.org)

**DR. DONALD W. AITKEN, Ph.D.**, Renewable Energy Scientist

**JOHN L. BURTON**, California State Senate President Pro Tem (Ret.)

**JIM GONZALEZ**, Chair

Californians for Solar and Clean Energy

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 7 ★

**WHO DO YOU BELIEVE?**

The statement above is signed by only a few individuals. But Prop. 7 is **OPPOSED** by dozens of organizations, representing millions of Californians, leading the fight for more renewable power and against global warming, including:

- California Solar Energy Industries Association
- California League of Conservation Voters
- Natural Resources Defense Council
- Center for Energy Efficiency and Renewable Technologies
- Environmental Defense Fund
- Union of Concerned Scientists

These organizations carefully reviewed Proposition 7 and concluded it's fatally flawed, riddled with loopholes, and will slam the brakes on renewable power development. To effectively fight global warming, we must get the solutions right. Prop. 7 gets it all wrong.

That's why 7 is also **OPPOSED** by:

- California Taxpayers' Association
- California Democratic Party
- California Republican Party
- Consumers Coalition of California
- Dozens of environmental, taxpayer, labor, senior, utilities, and business organizations.

**READ THE FINE PRINT**

It doesn't matter what proponents *claim* their measure will do. What matters is what's in the actual proposition.

- Prop. 7 forces small renewable energy companies out of California's market, eliminating competition and thousands of jobs.
  - There is **NO LANGUAGE** in the text of 7 that limits increases in our electricity bills.
  - Prop. 7 allows power providers to always charge 10% above market price of power, stifling competition for renewable energy.
  - Prop. 7 will cost us hundreds of millions of dollars in higher electricity and taxpayer costs, will not achieve its goals, and will stall efforts to substitute renewables for more expensive power.
- VOTE NO on 7!** [www.NoProp7.com](http://www.NoProp7.com)

**TOM ADAMS**, Board President

California League of Conservation Voters

**GARY T. GERBER**, President

Sun Light & Power

**BETTY JO TOCCOLI**, President

California Small Business Association

★ ARGUMENT AGAINST PROPOSITION 7 ★

Wind, solar, and other renewable power providers; environmental, consumer, and taxpayer groups; business and labor; and global warming scientists all OPPOSE Proposition 7.

Prop. 7—paid for by an Arizona billionaire with no energy expertise—is a deeply flawed measure that will:

- NOT achieve its stated goals and will actually *disrupt* renewable power development.
- Shut small renewable energy companies out of California's market.
- Unnecessarily increase electric bills and taxpayer costs by hundreds of millions of dollars, without achieving its stated goals.
- Create market conditions that could lead to another energy crisis.

PROP. 7 FORCES SMALL WIND AND SOLAR ENERGY COMPANIES OUT OF THE MARKET.

Prop. 7 contains a competition elimination provision shutting smaller renewable energy companies out of California's market. Renewable power from plants under 30 megawatts won't count toward meeting the law. Today, nearly 60 percent of contracts under California's renewable requirements are with these small providers.

*"Proposition 7 would devastate California's small solar businesses by forcing us out of the market—eliminating a major source of clean power and thousands of jobs."* — Sue Kateley, Executive Director, California Solar Energy Industries Association

PROP. 7 ALLOWS ENERGY PRICES TO BE CONTINUALLY LOCKED IN AT 10% ABOVE MARKET RATES AND LIMITS COMPETITION.

Proposition 7 allows power providers to always charge 10% above the market price of power, stifling competition for renewable power.

And nothing in Prop. 7 limits increases in our electric bills.

PROP. 7 DISRUPTS THE RENEWABLES MARKET AND COSTS CONSUMERS AND TAXPAYERS HUNDREDS OF MILLIONS OF DOLLARS.

*"Prop. 7 has many troubling provisions that will significantly increase costs for electricity consumers and harm the California economy."* — Philip Romero, Ph.D., Former Chief Economist, California Office of Planning and Research

*"Prop. 7's flawed provisions will disrupt renewable power*

*development, unnecessarily drive up costs, and stall efforts to substitute clean power for more expensive energy sources."* — Sheryl Carter, Energy Program Co-Director, Natural Resources Defense Council

*"Proposition 7 would lead to more bureaucracy and red tape and cost taxpayers hundreds of millions of dollars."* — Teresa Casazza, President, California Taxpayers' Association

WE'RE STILL PAYING FOR THE LAST ENERGY CRISIS.

Prop. 7 will create market conditions ripe for manipulation, much like ENRON took advantage of consumers during the energy crisis.

*"California consumers are still paying almost \$1 billion each year—nearly \$100 for every electricity customer—for the last energy crisis. We don't need a poorly-written measure that will lead to another energy crisis and higher electric bills."* — Betty Jo Toccoli, President, California Small Business Association

OPPOSED BY LEADING ENVIRONMENTAL ORGANIZATIONS AND RENEWABLE POWER PROVIDERS.

California leads the nation with clean energy standards requiring utilities to significantly increase renewable power, and we're expanding those efforts. Prop. 7 jeopardizes this progress.

Organizations leading the fight against global warming all OPPOSE Prop. 7:

- California League of Conservation Voters
  - California Solar Energy Industries Association
  - Center for Energy Efficiency and Renewable Technologies
  - Environmental Defense Fund
  - Natural Resources Defense Council
  - Union of Concerned Scientists
- Vote NO on Prop. 7. [www.NoProp7.com](http://www.NoProp7.com)

**SUE KATELEY**, Executive Director  
California Solar Energy Industries Association

**TOM ADAMS**, Board President  
California League of Conservation Voters

**TERESA CASAZZA**, President  
California Taxpayers' Association

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 7 ★

THE FOR-PROFIT UTILITY COMPANIES OPPOSE PROPOSITION 7

BIG MONEY IS BEING USED AGAINST A PROPOSITION THAT GUARANTEES CALIFORNIANS CLEAN ELECTRICITY FOR DECADES TO COME.

Three powerful utilities (Pacific Gas & Electric, Southern California Edison, and San Diego Gas & Electric) are funding the campaign against Proposition 7.

Did you notice that nowhere in their argument against Proposition 7 did they say how they would help reduce global warming? Or create the 370,000 jobs?

Instead, they make inaccurate charges to scare small renewable companies and consumers. The independent Legislative Analyst's report doesn't back their false claims.

JUDGE FOR YOURSELF:

- Why are both state political parties opposing Proposition 7? Could it be that the utility companies gave \$1.5 million to the state Democratic Party and \$1.1 million to the state Republican Party in the last four years? And more is coming!

- Why are some renewable energy providers opposing Proposition 7? Could it be that under Proposition 7 they'll be required to pay their workers the prevailing wage?
- Why do hand-picked environmental organizations oppose Proposition 7? Could it be they sit on many of the same boards and committees as the utilities do?

California is the 16th largest global warming polluter. We need to change how we make electricity.

California can help solve the moral challenge of our time: global warming and climate change.

We can do it with the renewable energy resources and technology we have now. That's the choice.

Vote YES on Proposition 7. [www.Yeson7.net](http://www.Yeson7.net)

**DOLORES HUERTA**, Co-Founder  
United Farmworkers Union

**CONGRESSMAN PAUL "PETE" McCLOSKEY JR.** (Ret.)

**JIM GONZALEZ**, Chair  
Californians for Solar and Clean Energy